S. HRG. 111–81

HEARING ON PENDING BENEFITS LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

APRIL 29, 2009

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HEARING ON PENDING BENEFITS LEGISLATION

WEDNESDAY, APRIL 29, 2009

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:32 a.m., in room 562, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

Present: Senators Akaka, Sanders, Burris, Begich, Burr, Isakson, and Wicker.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, CHAIRMAN, U.S. SENATOR FROM HAWAII

Chairman AKAKA. The U.S. Senate Committee of Veterans Affairs will come to order.

Aloha, good morning, and welcome to today's hearing.

Like the Health Legislative hearing last week, we have an ambitious agenda today that reflects the work and commitment of many Members of this Committee on both sides of the aisle. The bills we are reviewing today reflect a bipartisan effort of this Committee to help VA adapt to the needs of veterans and their families.

The legislation before us focuses on providing assistance to veterans disabled while serving their country and assisting servicemembers as they transition from military to civilian life. Both are areas in which this Committee has worked and will continue to work as we develop another strong package of veterans' benefits legislation.

Before we begin, I want to speak briefly about the items on the agenda that I have introduced. As veterans and their families all across this Nation struggle to stretch their dollars, the passage of S. 407, the Veterans' Compensation Cost-of-Living Adjustment Act of 2009, is critical. Among other benefits, it would increase the rates of compensation for veterans with service-connected disabilities, and it would increase the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

Many of the three million-plus recipients of these benefits depend upon the tax-free payments, not only to provide for their own basic needs but for the needs of their families. Without an annual COLA increase, these veterans and their families would see the value of their hard-earned benefits slowly diminish. We would be delinquent if we did not ensure that those who sacrificed so much for this country receive the benefits and services they have earned.

S. 514, the Veterans Rehabilitation and Training Improvements Act of 2009, would ensure that veterans in VA's vocational rehabilitation program receive a subsistence allowance equal to the pay grade of an E–5's housing stipend. And if a veteran completes VA's Vocational Rehabilitation Program, the bill also authorizes VA to reimburse that veteran for rehabilitation-related expenses, like childcare. Furthermore, the bill removes a cap on VA's independent living services.

S. 718, the Veterans' Insurance and Benefits Enhancement Act of 2009, is a comprehensive bill that would provide important benefits to veterans both young and old. This legislation would increase Veterans' Mortgage Life Insurance coverage, and supplemental Service-Disabled Veterans' Insurance for disabled veterans. It would also establish a new insurance program for service-connected veterans.

In addition, this legislation would expand eligibility for retroactive benefits from Traumatic Injury Protection coverage under the Servicemembers' Group Life Insurance program. Importantly, this bill would also increase certain benefits that have not been updated for many years for veterans and their survivors.

Last, I have introduced legislation S. 919 that would ease the burden placed on combat veterans to provide information on an event that caused a particular disability. This legislation would require VA to issue regulations that would specify events that are characteristic of particular combat zones and for which a veteran's testimony concerning exposure to those events should be conceded.

I am eager for an open discussion on these meaningful pieces of legislation. I thank you all for joining us this morning, and I look forward to hearing from all the witnesses.

At this time, I would like to call on Senator Wicker for any statements that you wish to make.

STATEMENT OF HON. ROGER F. WICKER,
U.S. SENATOR FROM MISSISSIPPI

Senator WICKER. Thank you very much, Mr. Chairman.

We have two very distinguished panels to hear from today, and I therefore will waive an opening statement so that we can get right to the testimony. Thank you, sir.

Chairman AKAKA. Thank you very much, Senator.

I want to welcome our principal witness from VA, Brad Mayes, who is the Director of the Compensation and Pension Service for VBA. He is accompanied by Richard Hipolit, Assistant General Counsel and Tom Lastowka, the Director of VA's Regional Office and Insurance Center. I had the pleasure of visiting several months ago. I thank you both for being here. VA's full testimony will appear in the record.

Mr. Mayes, will you please begin with your testimony?

STATEMENT OF BRADLEY G. MAYES, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION, DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY RICHARD HIPOLIT, ASSISTANT GENERAL COUNSEL, DEPARTMENT OF VETERANS AFFAIRS AND THOMAS M. LASTOWKA, DIRECTOR, VA REGIONAL OFFICE AND INSURANCE CENTER, VETERANS BENEFITS ADMINISTRATION, DEPARTMENT OF VETERANS AFFAIRS

Mr. MAYES. Mr. Chairman, thank you for having us here today.

Before I get started I was hoping you would permit me to go a little bit beyond the standard 5 minutes given the number of bills that we have to talk about today and the complexity and the importance of those bills.

Chairman AKAKA. Mr. Mayes, you may continue with your testimony.

Mr. MAYES. Thank you, Mr. Chairman, Senator Wicker.

I am pleased to be here today to provide the Department of Veterans Affairs' views on pending benefits legislation. I will not be able to address a few of the bills on today's agenda because we did not have time to coordinate the Administration's position and develop cost estimates, but we will provide that information in writing for the record.

Further, the Administration defers to the Departments of Labor and Defense regarding a position on S. 263 and S. 475 since those departments are primarily affected by this proposed legislation.

Regarding S. 347, VA does not support enactment of this bill because VA already has the authority to adjust the schedule of payments under the Traumatic Servicemembers' Group Life Insurance program as needed. Furthermore, VA previously considered as part of its "Year-One Review" of the TSGLI program whether the payment for a qualifying loss of a dominant hand should be higher than the payment for a qualifying loss of a non-dominant hand.

And VA concluded that a distinction was not necessary since the purpose of the TSGLI program is primarily to provide short-term financial assistance to servicemembers and their families because the families often suffer financial hardship to be with the injured members during their treatment and recovery periods. VA's compensation program, not TSGLI, is designed to compensate for the long-term effects of injuries incurred in service, and the compensation program does pay a greater benefit for loss of dominant hand.

S. 407, the Veterans' Compensation Cost-of-Living Adjustment Act of 2009 would, as you said, Mr. Chairman, direct the Secretary of Veterans' Affairs to increase administratively the rates of disability compensation for veterans with service-connected disabilities, including additional amounts authorized for dependents and the clothing allowance, DIC, and it would be effective December 1, 2009. VA supports a cost-of-living adjustment of this nature.

S. 514, the Veterans' Rehabilitation and Training Improvements Act of 2009, would provide for an increase in the amount of subsistence allowance payable to veterans participating in voc rehab programs under Chapter 31 of Title 38 United States Code, allow reimbursement of certain costs to those veterans, and remove the limitation on the number of veterans who may be provided programs of independent living.

We support, in principle, efforts to facilitate successful completion of voc rehab programs under Chapter 31. However, recent changes to VA education benefits, including the new Post-9/11 GI Bill may affect Chapter 31 participation and completion rates. The Department is evaluating the impact of this new benefit package and the implications for the Vocational Rehabilitation and Employment Program to include the need to adjust the subsistence allowance. For this reason, VA is unable to support increased subsistence rates at this time; however, VA does not object to the removal of the limitation on the number of veterans who may enter programs of independent living subject to the availability of offsets for additional costs associated with that expansion.

S. 663, the Belated Thank You to the Merchant Mariners of World War II Act of 2009, would establish in the General Fund of the Treasury a Merchant Mariner Equity Compensation Fund from which VA would pay $1,000 per month to eligible members of the Oceangoing Merchant Marine who had service between December 7, 1941 and December 31, 1946.

There can be no doubt that merchant mariners were exposed to many of the same rigors and risks of service as those confronted by members of the Navy and the Coast Guard during World War II. However, the universal nature of the benefit that S. 663 would provide for individuals with qualifying service, and the amount of the benefit that would be payable or difficult to reconcile with the benefits VA currently pays to other veterans, as well as members of the Oceangoing Merchant Marine Service during World War II, S. 663 would create what is essentially a service pension for a particular class of individuals.

The bill would authorize the inequitable payment of a greater benefit to a Merchant Mariner simply based on qualifying service than a veteran currently receives for a service-connected disability rated at 60 percent disabling. Accordingly, the bill would provide to Merchant Mariners significant preferential treatment not provided to other veterans.

S. 691 and S. 746 would require VA to establish national cemeteries in El Paso County, Colorado and in the Sarpy County, Nebraska region, respectively. VA does not support the proposed legislation because the criteria VA has adopted and Congress has endorsed for determining the need for new national cemeteries requires that there be at least 170,000 veterans not currently served by a burial option in a national or State veterans' cemetery residing within 75 miles of the proposed site. And based on these criteria, the need for a new national cemetery is not demonstrated in these locations.

Regarding S. 718, the Veterans' Insurance and Benefits Enhancement Act of 2009, Section 101, would create a new life insurance program that would provide up to $50,000 of coverage to veterans who are less than 65 years old and have a service-connected disability. VA supports Section 101 subject to Congress' enactment of legislation offsetting the increased costs associated with this provision because it would meet service-disabled veterans' needs by providing more adequate amounts of life insurance than currently available under the SDVI program. However, VA does not support paying for administrative costs from premiums because the Admin-

istration believes that the cost of entitlement should be separate and distinct from the cost of administering those entitlements.

Section 102 would increase the maximum amount of supplemental SDVI from $20,000 to $30,000. VA supports Section 102 provided offset source of funding.

VA defers to the Department of Defense on the merits of Section 103 because DOD would bear the costs associated with this enactment.

Veterans Mortgage Life Insurance is available to eligible individuals age 69 or younger with severe service-connected disabilities who receive a specially-adapted housing grant. Currently, the maximum amount of VMLI provided is the lesser of $90,000 or the amount of the loan outstanding on the housing unit. Section 104 would increase the $90,000 limitation to $150,000, and then $200,000 after January 1, 2012. Subject to legislation offsetting the increased costs, VA supports Section 104.

Section 105 would correct a previous inequity in the law and provide that all insurable spouses of servicemembers, whether those members are disabled or not, would have the same time period in which to convert their TSGLI coverage to a privately obtained policy consistent with the other conversion time periods specified in the statute. However, Section 105 would specify that a dependent's coverage would terminate within a specified period after the member separated or was released from the uniformed services. This phrase would not include Ready Reservists who are separated or released from an assignment rather than from the Uniformed Services. And VA supports this provision, and there are no associated costs.

Section 201 of the bill would require the VA to increase the monthly payment of temporary DIC that is payable for one or more dependent children under the age of 18 years. VA supports enactment of this provision, the benefit costs of which would be insignificant.

VA supports enactment of Section 202 because it would accomplish the same purpose for which VA proposed legislation to the last Congress. In 2001, Congress made wartime veterans age 65 years or older eligible for pension without regard to the permanent and total disability requirement. In 2006, the Court of Appeals for Veterans' Claims held that veterans age 65 or older are also eligible for the higher rate of pension authorized for veterans who are permanently housebound without regard to the permanent and total disability requirement. Although the Court's holding is arguably a plausible interpretation of the literal terms of the statute, we believe it is inconsistent with Congress' intent because it results in inconsistent and illogical treatment of veterans' claims and subverts the primary purpose of authorizing the higher rate of pension.

Believing that Congress did not intend such an inequitable result, we proposed legislation to overturn the Court's interpretation, and we support enactment of this section for those reasons. And we estimate cost savings of $3.2 million the first year and $175.5 million over 10 years.

Regarding Section 203, I would like to state for the record that my written testimony, Mr. Chairman, cited findings in a 2001 pro-

gram evaluation of benefits for survivors of veterans with service-connected disabilities as the basis for the Administration's opposition to increases to the monthly rates of DIC for surviving spouses and parents. And while the study did form the basis for the Administration's opposition to rate increases as stipulated at Section 203(a) for surviving spouses who were entitled to DIC at the housebound or aid and attendance rate, it didn't adequately address the needs of surviving parents.

A subsequent program evaluation of the parents' DIC program in 2004, which I did not reference in my written testimony, recommended an increase in the parents' DIC rate. As such, I would ask that you provide me the opportunity to look more closely at this benefit to determine if, in fact, cost of living adjustments have already been made similar to those proposed in this section of the bill, and whether further adjustment is necessary.

Sir, I want to get this right. VA did not have sufficient time to prepare benefit cost estimates for this provision. With the Committee's permission, we will provide a cost estimate for the record.

Section 204(a) of the bill increases the maximum monthly pension amounts from 90 to 100 for spouseless and childless veterans, and we do not object to these increases.

Sections 301 and 302 would require VA to make supplemental payments in addition to currently required statutory payments for funeral and burial-related expenses if—and only if—funds are specifically appropriated in advance for that purpose. VA has not supported similar legislation in the past because funding a single benefit from multiple sources can create numerous complications in administration and represents an unsound budgeting practice.

Section 401(a) would add to the list of disabilities that qualify a compensation-receiving veteran or active duty servicemember for assistance in obtaining an automobile or other conveyance or adaptive equipment an additional disability—a severe burn injury, as determined pursuant to VA regulations. Section 401(b) would make various stylistic changes to Section 3901.

Regarding Section 402, we plan to review the scope of our existing authority to determine if there are circumstances under which severe burn victims are not adequately covered by the automobile and specially adaptive equipment grants.

And finally, S. 820, the Veterans Mobility Enhancement Act of 2009 would increase from $11,000 to $22,500 the maximum amount of assistance VA is authorized to provide an eligible person to obtain an automobile or other conveyance. It would also require VA to increase that amount, effective October 1 of each year to an amount equal to 80 percent of the average retail cost of new automobiles for the preceding calendar year. It would require VA to establish the method for determining that average retail cost.

We understand the importance of providing sufficient resources for vehicles or adaptive equipment to servicemembers and veterans who rely on them, but we cannot support this bill at this time. In order to best support the goals of the program, we do need some time to review the appropriate amount to provide for this benefit.

Regarding S. 842—the final bill that I have comments in my oral statement for—Section 1 of the bill, concerning mortgages and mortgage foreclosures, relates to the Servicemembers Civil Relief

Act, a law primarily affecting active duty service personnel. Accordingly, VA defers to the views of DOD with regard to that section. And Section 2 would authorize VA to purchase a VA-guaranteed home loan from the mortgage holder, if the loan is modified by a bankruptcy judge under the authority of 11 U.S.C. § 1322(b). VA cannot support any additional repurchasing authority until the budgetary impacts of such authority on existing and future cohorts of loans can be reviewed.

Mr. Chairman, thank you for your indulgence with my long oral statement. This concludes my statement, and I would be pleased to answer any questions you or the other Members of this Committee may have.

[The prepared statement of Mr. Mayes follows:]

PREPARED STATEMENT OF BRADLEY G. MAYES, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee: I am pleased to be here today to provide the Department of Veterans Affairs' (VA) views on pending benefits legislation. I will not be able to address a few of the bills on today's agenda because VA received them in insufficient time to coordinate the Administration's position and develop cost estimates, but we will provide that information in writing for the record. Those bills are S. 315, section 203 of S. 728, S. 847, the draft "Clarification of Characteristics of Combat Service Act of 2009," and a draft bill to modify the commencement of the period of payment of original awards of compensation for veterans who are retired or separated from the uniformed services for disability.

S. 263 "SERVICEMEMBERS ACCESS TO JUSTICE ACT OF 2009"

S. 263, the "Servicemembers Access to Justice Act of 2009," would make several revisions to the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. Because that Act is administered by the Department of Labor, VA defers to the Department of Labor concerning the Administration's position on S. 263.

Because this bill required extensive coordination among several VA components, we did not have sufficient time before this hearing to finalize a position. However, we will provide our position to the Committee in writing for the record.

S. 347

The Servicemembers' Group Life Insurance program includes protection for covered servicemembers from certain qualifying losses directly resulting from traumatic injury in service (known as Traumatic Servicemembers' Group Life Insurance or "TSGLI"). Current law requires that the qualifying losses prescribed by VA by regulation include "[l]oss of a hand * * * at or above the wrist." Section 1(a) of S. 347 would authorize VA, in specifying the amount of the payment to be made under the TSGLI program for each qualifying loss, to distinguish between the severity of a qualifying loss of a dominant hand and a qualifying loss of a non-dominant hand. Section 1(b) would require VA to issue regulations providing mechanisms for payments for such losses incurred before the date of enactment of this bill.

VA does not support enactment of this bill because it is unnecessary. VA already has the authority to adjust the schedule of payments under the TSGLI program as needed. Furthermore, VA has previously considered, as part of its "Year-One Review" of the TSGLI program, whether the payment for a qualifying loss of a dominant hand should be higher than the payment for a qualifying loss of a non-dominant hand and concluded that it should not, for the reasons discussed below.

The TSGLI program is modeled after the accidental death and dismemberment programs in the commercial sector. In the commercial sector, there is no precedent for paying a higher benefit for a "dominant" hand. Furthermore, medical professionals we consulted on the issue of dominance of one hand or arm in the course of the Year-One Review commented that some individuals use the "non-dominant" arm as the primary arm for a few activities, i.e., there is some degree of variability with respect to which arm is dominant for different activities. They also pointed out that some individuals are ambidextrous. These factors would complicate the adjudication of such claims.

The purpose of the TSGLI program is to provide short-term financial assistance to servicemembers and their families because the families often suffer financial hardship to be with the injured members during their treatment and recovery periods. The amount of a payment depends on the nature of the injury and the expected time needed for recovery. There is no evidence to date that loss of a dominant hand requires a longer recovery and rehabilitation period than loss of a non-dominant hand does.

We are also concerned about the impact of this proposal on our ability to maintain a peacetime premium of $1.00 per month, as Congress intended. Although the relatively low incidence of amputation of the dominant hand alone would not likely affect the premium, it would open the door to requests for disparate treatment of other injuries, such as loss of a dominant foot or leg, the dominant eye, burns on the dominant side of the body, etc. The establishment of higher payments for other dominant-side losses could result in the need to charge a higher premium for coverage.

The law provides that covered members are covered against inability to carry out the activities of daily living resulting from traumatic brain injury and defines the term "inability to carry out the activities of daily living" as inability to independently perform 2 or more of 6 specified functions, such as bathing, dressing, and eating. We are also concerned that enactment of S. 347 could result in requests for disparate treatment if it were alleged that traumatic brain injuries had a greater impact on the dominant side of the body than the non-dominant side.

Finally, VA's compensation program, not TSGLI, is designed to compensate for the long-term effects of injuries incurred in service. The compensation program does pay a greater benefit for loss of a dominant hand.

VA estimates that enactment of S. 347 would result in costs of $1.1 million over five years and $2.3 million over ten years.

S. 407 "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2009"

S. 407, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2009," would direct the Secretary of Veterans Affairs to increase administratively the rates of disability compensation for veterans with service-connected disabilities, including the additional amounts authorized for dependents and the clothing allowance, and of dependency and indemnity compensation for the survivors of veterans whose deaths are service related, effective December 1, 2009. The rates of increase would be the same as the cost-of-living adjustment that will be provided under current law to Social Security recipients. The bill would also authorize VA to adjust the rates of disability compensation payable under prior laws to persons who have not received compensation under chapter 11 of title 38, United States Code.

VA supports a cost-of-living adjustment of this nature. We believe this legislation is necessary to ensure the affected benefits against any eroding effects of inflation. The worthy beneficiaries of these benefits deserve no less.

S. 475 "MILITARY SPOUSES RESIDENCY RELIEF ACT"

S. 475, the "Military Spouses Residency Relief Act," would make revisions to the Servicemembers Civil Relief Act concerning the spouses of servicemembers. Because S. 475 would primarily affect servicemembers and their spouses, VA defers to the Department of Defense (DOD) concerning the Administration's position on the bill.

S. 514 "VETERANS REHABILITATION AND TRAINING IMPROVEMENTS ACT OF 2009"

S. 514, the "Veterans Rehabilitation and Training Improvements Act of 2009," would provide for an increase in the amount of subsistence allowance payable by VA to veterans participating in vocational rehabilitation programs under chapter 31 of title 38, United States Code, allow reimbursement of certain costs to those veterans, and remove the limitation on the number of veterans who may be provided programs of independent living.

Specifically, section 2 of S. 514 would increase the rates of subsistence allowance provided veterans under section 3108(b) of title 38, United States Code. The amount of monthly subsistence allowance payable would be equal to the national average of the amount of basic allowance for housing payable under section 403 of title 37, United States Code, for a member of the uniformed services in pay grade E–5. The revision would increase the amount of subsistence allowance provided to veterans participating in training and employment services under chapter 31 to be roughly equivalent to the housing allowance veterans will receive under the chapter 33 Post-9/11 GI Bill.

Section 3 of the bill would authorize reimbursement of costs incurred by a veteran as a direct consequence of participation in a rehabilitation program under chapter

31. Such cost would include child-care expenses and clothing for employment interviews, as well as other costs VA would prescribe in regulations. Reimbursement of these costs could serve as an incentive for veterans to complete their rehabilitation programs.

Section 4 of the bill would remove section 3120(e) from chapter 31, thereby removing the limitation on the number of veterans who may enter independent living programs each fiscal year.

We support, in principle, efforts to facilitate successful completion of vocational rehabilitation programs under chapter 31, and we recognize that increasing the subsistence allowance and reimbursements provided to veterans participating in training and employment services will encourage more veterans to continue their rehabilitation programs. Increased rates of subsistence allowance would allow veterans to pursue rehabilitation on a full-time basis, leading to entry into employment in a shorter period of time. However, we are unable to support sections 2 and 3 of S. 514 at this time.

Recent changes to VA education benefits, including the new Post-9/11 GI Bill, may affect chapter 31 participation and completion rates. In addition, as recommended by the Dole-Shalala Commission on Wounded Warriors, VA is currently completing a review of its compensation program and proposed transition payments, which may have implications for the vocational rehabilitation program. Complete review of comprehensive benefits, including possible transition benefits and current subsistence allowance, is necessary before VA can fully evaluate the subsistence allowance and reimbursement increases proposed in S. 514. The Department plans to evaluate its total benefit package and recommend necessary improvements. For these reasons, and due to the bill's large increase in direct costs without an identified offset, VA cannot support this bill. VA estimates that the costs for sections 2 and 3 of S. 514 if enacted would be $361.4 million during the first year, $2.2 billion over 5 years, and $4.4 billion over 10 years.

Subject to the availability of offsets for additional costs associated with the expansion, VA does not object to the removal of the limitation on the number of veterans who may enter programs of independent living so that all veterans who need independent living services now and in the future may receive them. In 2007, in connection with a similar provision, VA estimated that costs would be $2.9 million in the first year and $104 million over ten years. We will provide for the record an updated cost estimate for section 4 of S. 514.

S. 663 "BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT OF 2009"

S. 663, the "Belated Thank You to the Merchant Mariners of World War II Act of 2009," would establish in the general fund of the Treasury a "Merchant Mariner Equity Compensation Fund," from which VA would pay $1,000 per month to eligible individuals. An eligible individual would be one who: (1) before October 1, 2009, submits to VA an application containing such information and assurances as VA may require; (2) has not received benefits under the Servicemen's Readjustment Act of 1944; and (3) engaged in qualified service. Qualified service would be essentially oceangoing Merchant Marine service between December 7, 1941, and December 31, 1946.

The bill would also authorize for fiscal years 2010 through 2014 appropriations, which would remain available until expended. It would require VA to include in its budget submissions for each fiscal year detailed information on the operation of the compensation fund, including the number of applicants, the number of eligible individuals receiving benefits, the amounts paid out, the administration of the fund, and an estimate of the amounts necessary to fully fund the compensation fund for that and each of the three subsequent fiscal years. Finally, the bill would require VA to prescribe, not later than 180 days after enactment, regulations to carry out the program.

VA does not support enactment of this bill for several reasons. First, to the extent that S. 663 is intended to offer belated compensation to Merchant Mariners for their service during World War II, many Merchant Mariners and their survivors are already eligible for veterans' benefits based on such service.

Pursuant to authority granted by section 401 of the "GI Bill Improvement Act of 1977," Public Law 95–202, the Secretary of Defense in 1988 certified Merchant Mariner service in the oceangoing service between December 7, 1941, and August 15, 1945, as active military service for VA benefit purposes. As a result, these Merchant Mariners are eligible for the same benefits as other veterans of active service. This bill appears to contemplate concurrent eligibility with benefits Merchant Mariners may already be receiving from VA, a special privilege not available to other vet-

erans. Furthermore, to the extent that Merchant Mariners may be distinguished from other veterans due to the belated recognition of their service, there are myriad other groups, listed at 38 C.F.R. § 3.7(x), that could claim to have been similarly disadvantaged. These groups include the Women's Air Force Service Pilots, the Women's Army Auxiliary Corps, the famed Flying Tigers, and many others who also gained their status decades after their courageous service and contribution to victory in 1945.

There can be no doubt that Merchant Mariners were exposed to many of the same rigors and risks of service as those confronted by members of the Navy and the Coast Guard during World War II. However, the universal nature of the benefit that S. 663 would provide for individuals with qualifying service and the amount of the benefit that would be payable are difficult to reconcile with the benefits VA currently pays to other veterans. S. 663 would create what is essentially a service pension for a particular class of individuals. Additionally, this bill would authorize the inequitable payment of a greater benefit to a Merchant Mariner, simply based on qualifying service, than a veteran currently receives for a service-connected disability rated as 60-percent disabling. Accordingly, S. 663 would provide to Merchant Mariners significant preferential treatment not provided to other veterans.

VA estimates that enactment of S. 663 would result in a total additional benefit cost of approximately $116 million in the first year and an additional benefit cost of $497 million over ten years.

S. 691 AND S. 746

Section 1(a) of S. 691 and section 1(a) of S. 746 would require VA to establish a national cemetery in El Paso County, Colorado, and in the Sarpy County, Nebraska, region, respectively, to serve the needs of veterans and their families in the "southern Colorado region" and the region encompassing eastern Nebraska, western Iowa, and northwest Missouri.

In each bill, section 1(b) would require VA to consult with various Federal, State, and local officials before selecting the site for the cemetery. Section 1(c) would authorize VA to accept, on behalf of the United States, the gift of an appropriate parcel of real property to use in establishing the cemetery and would provide that the property be considered a gift for purposes of Federal income, estate, and gift taxes. Section 1(d) would require VA to report to Congress, as soon as practicable after the date of enactment, on the establishment of the cemetery, including a schedule for establishment and an estimate of costs associated with establishment. Section 1(e) of S. 691 lists the counties in Colorado that the term "southern Colorado region" would comprise. Section 1(e) of S. 746 lists the counties in Nebraska, Iowa, and Missouri that the term "Sarpy County region" would comprise.

VA does not support S. 691 or S. 746. The criteria VA has adopted and Congress has endorsed for determining the need for new national cemeteries require that there be at least 170,000 veterans not currently served by a burial option in a national or state veterans cemetery residing within 75 miles of the proposed site. Based on these criteria, the need for a new national cemetery is not demonstrated.

S. 691 references 29 counties to be served by a new national cemetery in El Paso County, Colorado. However, the majority of these counties are already served by an open national or state veterans cemetery. The remaining counties do not meet our current population threshold for establishing a new national cemetery. In fact, the vast majority of veterans who reside in the El Paso County area are currently served by either Fort Logan National Cemetery or Fort Lyon National Cemetery. Fort Logan National Cemetery will have casket and cremation burial space available until approximately 2019. Fort Lyon National Cemetery will have casket and cremation burial space available until approximately 2030. Other areas further west-southwest of El Paso County are served by Veterans Memorial Cemetery of Western Colorado, located in Grand Junction, Colorado, in Mesa County.

Although there is no national or state veterans cemetery option for the veterans of eastern Nebraska, the 75-mile service area for the proposed Sarpy County location does not meet the veteran population threshold. As of September 30, 2008, approximately 110,000 Nebraska, Iowa, and Missouri Veterans reside within the Sarpy County service area. In addition, of the 82 Nebraska, Iowa, and Missouri counties listed in the bill and described as the "Sarpy County region," only 27 are located within 75 miles of Sarpy County. Fifty-five counties listed would not be served by a cemetery in the proposed location based on the criteria endorsed by Congress.

Besides objecting to S. 691 and S. 746 based on the lack of demonstrated need for a new cemetery, we note that the cost of establishing a new cemetery in these regions would be considerable. Based on recent experience, the cost for establishing

a new national cemetery ranges from $500,000 to $750,000 for environmental compliance requirements; $1 million to $2 million for master planning and design; $1 million to $2 million for construction document preparation; $5 million to $10 million for land acquisition (if required); and $20 million to $30 million for the initial phase of construction. The average annual cost for operating a new national cemetery ranges from $1 million to $2 million.

As required by law, VA is establishing 12 new national cemeteries, 9 of which have been opened for burials. The locations for these cemeteries were determined from demographic studies of the veteran population, which allow VA to focus its efforts on areas that will serve the greatest number of veterans. VA will begin to plan now for a successor cemetery in anticipation of Fort Logan's closure in 2019. VA believes land for the successor cemetery should be acquired closer to the Denver metropolitan area. The new Land Acquisition Line Item in the Major Construction account will facilitate the purchase of suitable land whenever it becomes available.

As an alternative, the VA State Cemetery Grants program can provide additional burial options for veterans in areas not served by an existing national or state veterans cemetery. Through this program, VA may provide up to 100 percent of the cost to establish, expand, or improve a state veterans cemetery, including the cost of initial equipment to operate the cemetery. VA worked with Colorado officials in providing more than $6 million to establish a state veterans cemetery in Grand Junction and would be pleased to assist Colorado in exploring this option in other areas of the State. Similarly, VA has worked with Nebraska officials to fund a state cemetery that will serve veterans in the Alliance, Nebraska, area. That grant is expected to be awarded in late FY 2009.

S. 728 "VETERANS' INSURANCE AND BENEFITS ENHANCEMENT ACT OF 2009"

TITLE I—INSURANCE MATTERS

Section 101 of S. 728, the "Veterans' Insurance and Benefits Enhancement Act of 2009," would create a new life insurance program that would provide up to $50,000 of coverage to veterans who are less than 65 years old and have a service-connected disability. A veteran would be able to elect an amount less than $50,000 that is evenly divisible by $10,000, but the amount of an insured's coverage would decrease by 80 percent at age 70. To obtain coverage, an eligible veteran would have to apply for the insurance not later than 2 years after being notified by VA that he or she has a service-connected disability or 10 years after separation from the Armed Forces, whichever date is earlier. Premiums would be based on the 2001 Commissioners Standard Ordinary Basic Table of Mortality and interest at the rate of 4½ percent per year, and they would not increase while the insurance is in force. Premiums would be waived for certain veterans who have a totally disabling service-connected disability or who are 70 years of age or older.

The insurance would be granted on a nonparticipating basis. All premiums would be credited to a revolving fund in the United States Treasury, from which any payments would be directly made. Appropriations to the fund would be authorized. Administrative costs for the program would be paid from premiums. Payments for claims in excess of the amounts credited to the fund would be paid from appropriations. There would be a one-year open season beginning on April 1, 2010, during which a veteran currently insured under Service-Disabled Veterans' Insurance (SDVI) who is under age 65 could exchange his or her SDVI for the new insurance. However, an insured's combined amount of coverage under SDVI, Supplemental SDVI, and the new program could not exceed $50,000.

Currently, SDVI provides up to $10,000 in coverage, as either a permanent or term insurance plan, and premiums are based on an insured's age until the insured reaches age 70, when the premium rates are capped. SDVI insureds who become eligible for a waiver of premiums due to total disability can obtain Supplemental SDVI of up to $20,000, for a total available amount of SDVI coverage of $30,000. Current SDVI premium rates per $1,000 of coverage are higher than quotes for healthy individuals from commercial life insurance companies.

Subject to Congress' enactment of legislation offsetting the increased costs that would be associated with the enactment of this section, VA supports section 101 because it would meet service-disabled veterans' needs by providing more adequate amounts of life insurance than currently available under the SDVI program at more reasonable rates that would be level for the life of the insured.

However, VA does not support paying for administrative costs from premiums because the Administration believes that the cost of entitlements should be separate and distinct from the cost of administering those entitlements. Furthermore, we do not believe that supplementing a discretionary appropriation with mandatory receipts is an appropriate budgeting practice.

VA estimates that enactment of section 101 would result in costs of $83.0 million over 5 years and $326 million over 10 years.

Section 102 would increase the maximum amount of Supplemental SDVI from $20,000 to $30,000.

VA supports section 102, provided Congress identifies an offsetting source of funding. By increasing to $30,000 the amount of available supplemental SDVI, this provision would address a major concern of veterans, as reported in the study "Program Evaluation of Benefits for Survivors of Veterans with Service-Connected Disabilities." It would increase the financial security of disabled veterans by affording them the opportunity to purchase additional life insurance coverage otherwise not available to them.

VA estimates that enactment would result in costs of $2.1 million over 5 years and $7.3 million over 10 years.

Section 103 would remove the geographic requirement for eligibility for retroactive TSGLI benefits. It would extend eligibility for retroactive benefits for traumatic injury protection coverage under TSGLI to all members of the uniformed services who sustained a qualifying loss from a traumatic injury between October 7, 2001, and November 30, 2005, regardless of geographic location.

Section 1032 of Public Law No. 109–13 authorized the payment of TSGLI to any servicemember insured under Servicemembers' Group Life Insurance (SGLI) who sustains a traumatic injury that results in one of certain losses. Under section 1032(c) of Public Law 109–13, TSGLI also was authorized for members of the uniformed services who experienced a traumatic injury between October 7, 2001, and December 1, 2005, provided the qualifying loss was a direct result of injuries incurred in Operation Enduring Freedom (OEF) or Operation Iraqi Freedom (OIF). Section 501 (b)(1) of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, Public Law 109–233, narrowed eligibility for retroactive TSGLI to apply only to servicemembers who suffered a qualifying loss as a direct result of a traumatic injury incurred in the theater of operations for OEF or OIF during the period beginning on October 7, 2001, and ending at the close of November 30, 2005. Section 103 would eliminate the requirements that a qualifying loss directly result from a traumatic injury incurred in the theater of operations for OEF or OIF. The amendment would be effective on January 1, 2010.

VA defers to the Department of Defense (DOD) on the merits of this section, because DOD would bear the costs associated with its enactment. VA estimates that enactment of section 103, which would provide retroactive eligibility for the period from October 7, 2001, through November 30, 2005, would result in a cost of $47.7 million for the entire period.

Veterans' Mortgage Life Insurance (VMLI) is available to eligible individuals age 69 or younger with severe service-connected disabilities who receive a specially adapted housing grant. Currently, the maximum amount of VMLI provided is the lesser of $90,000 or the amount of the loan outstanding on the housing unit. Section 104 would increase the $90,000 limitation to $150,000 and then $200,000 after January 1, 2012.

Subject to Congress' enactment of legislation offsetting the increased costs that would be associated with the enactment of this section, VA supports section 104 because the percentage of total mortgage balances covered by the current amount of VMLI available has decreased over the past several years. The maximum VMLI amount was last increased from $40,000 to $90,000 in 1992, but the percentage of total mortgage balances covered by VMLI has declined since then from 91 percent to 64 percent because of the increase in housing costs during that period. Section 104 would bring the program to a level of coverage more in line with today's mortgages.

VA estimates that enactment of section 104 would result in benefit costs of $22.0 million over 5 years and $54.9 million over 10 years.

Before last year, SGLI coverage of a covered servicemember's insurable dependent ended either 120 days after the member elected to end coverage or the earliest of three dates: (1) 120 days after the member died; (2) 120 days after the date the member's coverage ended; or (3) 120 days after the dependent ceased to be an insurable dependent. Section 403(b) of Public Law 110–389, at VA's request, amended the second of the three listed dates to be simply the date the member's coverage ended. The purpose was to provide that an insurable dependent's coverage would end when the member's coverage ended, generally 120 days after separation or release from active service, rather than 120 days after the member's coverage ended, or 240 days after the member's separation or release from active service. That amendment, however, inadvertently allowed certain insurable dependents' coverage to continue long after the members' separation or release from service—insurable dependents of persons on active duty or Ready Reservists who are totally disabled on the date of sepa-

ration or release from service or assignment. Such insureds on active duty are potentially eligible for continued coverage for up to 2 years after the date of separation or release from service and such Ready Reservists are potentially eligible for an additional one year of coverage after separation or release from an assignment. Under the recent amendment, the insurable dependents of insureds on active duty are also potentially eligible for continued coverage for up to 2 years after the date of separation or release from service or in the case of an insurable dependent of a Ready Reservist up to 1 year after the date of separation or release from an assignment.

Section 105 of the bill would correct the inadvertent omission of those insurable dependents from the scope of the recent amendment. Section 105 would amend the second of the 3 dates listed above to be "120 days after the date of separation or release from the uniformed services." Under that provision, no insurable dependent, not even those of members who remain covered for up to 1 or 2 years after service or assignment, could remain covered under SGLI for more than 120 days after the member's separation or release from service or assignment.

VA supports this provision. It would equitably provide that all insurable spouses of servicemembers, whether those members are disabled or not, would have the same time period in which to convert their SGLI coverage to a privately-obtained policy, consistent with the other conversion time periods specified in section 1 968(a)(5) of title 38 of the United States Code. However, section 105 would specify that a dependent's coverage would terminate within the specified period after the member is separated or released "from the uniformed services." This phrase would not include Ready Reservists who are separated or released from an "assignment" rather than from the "uniformed services."

No costs are associated with this provision.

TITLE II—COMPENSATION AND PENSION MATTERS

Section 201 of S. 728 would require VA to increase the monthly payment of temporary dependency and indemnity compensation (DIC) payable for a limited period under 38 U.S.C. § 1311(f) to a surviving spouse with one or more dependent children under the age of 18 years, whenever benefit payments under title II of the Social Security Act are increased as a result of an increase in the cost of living. These DIC payments would be increased by the same percentage as Social Security benefits are increased, effective the same date as the Social Security benefit increase is effective.

VA supports enactment of this provision, the benefit costs of which would be insignificant.

Section 202 would clarify that veterans entitled to pension based on advanced age alone rather than on permanent and total disability do not qualify for special monthly pension under subsections (d), (e), or (f)(2)-(4) of section 1521, United States Code. Wartime veterans age 65 or older would continue to be eligible for rates of pension prescribed by subsections (b), (c), (f)(1) and (5), and (g) of section 1521. It would also clarify that pension based on age alone is subject to three limitations also applicable to pension based on permanent and total disability: (1) certain children's income is attributable to a veteran for purposes of determining the veteran's annual income; (2) a veteran is considered to be living with a spouse who resides elsewhere unless they are estranged; and (3) a veteran who is entitled to pension based on his or her own wartime service and based on someone else's service is entitled to receive only the greater benefit. These amendments would apply to pension claims filed on or after the date of enactment.

VA supports enactment of section 202 because it would accomplish the same purpose for which VA proposed legislation to the last Congress. In 2001, Congress made wartime veterans age 65 years or older eligible for pension without regard to the permanent-and-total-disability requirement of the statute authorizing pension to veterans who are permanently and totally disabled. In 2006, the Court of Appeals for Veterans Claims held that veterans age 65 or older are also eligible for the higher rate of pension authorized for veterans who are permanently housebound, without regard to the permanent-and-total-disability requirement. Although the court's holding is arguably a plausible interpretation of the literal terms of the statutes, we believe it is inconsistent with Congress' intent because it results in inconsistent and illogical treatment of veterans' claims and subverts the primary purpose for authorizing the higher rate of pension—to provide additional pension to veterans with additional expenses due to their high degree of disability above and beyond permanent and total disability. Under the court's interpretation, elderly veterans who are not permanently and totally disabled could receive a higher pension rate than elderly veterans who are permanently and totally disabled. Believing that Congress did not intend such an inequitable result, we proposed legislation to overturn the court's interpretation, and we support enactment of section 202.

We estimate cost savings of $3.2 million the first year and $175.5 million over 10 years.

Section 203(a) would increase monthly rates of DIC for disabled surviving spouses. Section 203(b) would increase the maximum and minimum monthly rates of DIC payable to parents and provide for an increased monthly payment for parents who, by reason of disability, are permanently housebound but do not qualify for parents in need of aid and attendance. Section 203(c) would codify increases already made in the annual income limits applicable to parents' DIC. Section 203(d) would replace the obsolete term "six months' death gratuity" in 38 U.S.C. § 1315(f)(1)(A) because the death gratuity paid by DOD under 10 U.S.C. §§ 1475–1480 is a fixed amount, rather than the equivalent of six months of a servicemember's pay. Section 203(e) would subject the new rate of DIC for a housebound parent and the minimum monthly amounts of parents' DIC to annual increases indexed to cost-of-living increases in Social Security benefits. The amendments made by section 203 would take effect on October 1, 2009, and would apply to DIC payable for months beginning on or after that date. However, there would be no cost-of-living increase in the minimum monthly DIC rates during fiscal year 2010.

VA is committed to administering DIC payments that meet program goals. The 2001 "Program Evaluation of Benefits for Survivors of Veterans with Service-Connected Disabilities"—the same study that provides the basis for our support of the proposed increases to life insurance—found that DIC successfully meets the needs of beneficiaries. While our support for cost-of-living increases as proposed under S. 407 demonstrates our commitment to providing adequate and necessary increases over time, we believe that the increases to DIC proposed under section 203 are not necessary to achieve the goals of the program.

In addition, the purpose of increasing the minimum monthly payment for parents' DIC from $5 to $100 and indexing that figure for inflation is not clear. Because paying parents an arbitrary minimum monthly amount of DIC that is higher than the payment computed under the need-based formula established in VA's implementing regulations at 38 C.F.R. § 3.25 is a departure from the need-based principles underlying parents' DIC, any increase in the minimum rate would constitute a further departure from need-based principles, and indexing the minimum payment for inflation would amplify this departure.

VA did not have sufficient time to prepare benefit cost estimates for this provision. No additional administrative costs are anticipated. With the Committee's permission, we will provide a cost estimate for the record.

Section 204(a) would increase from $90 to $100 the maximum monthly pension amounts for spouse-less and childless veterans who are being furnished VA domiciliary or nursing home care or are covered by a Medicaid plan for services furnished by a nursing facility. These limits would be subject to annual cost-of-living increases indexed to such increases to Social Security benefits. Section 204(b) would subject children in receipt of death pension to the limits currently applicable to institutionalized veterans and surviving spouses. Under section 204(c), these amendments would be effective October 1, 2009, but no cost-of-living adjustment would be made during fiscal year 2010.

VA does not object to these increases in maximum pension payments to affected individuals so long as Congress enacts offsetting savings. Application of the limits to children in receipt of death pension would be reasonable. And under the annual cost-of-living adjustment, these beneficiaries would receive benefit increases commensurate with those provided for other VA benefits.

We estimate costs of $5.3 million over one year and $10.7 million over 2 years.

TITLE III—BURIAL AND MEMORIAL AFFAIRS MATTERS

Sections 301 and 302 would require VA to make supplemental payments in addition to currently required statutory payments for funeral and burial-related expenses, but if and only if funds are specifically appropriated in advance for that purpose. Specifically, those sections would require a supplemental payment of $900 for non-service-connected deaths, $2,100 for service-connected deaths, and $445 for the plot or interment allowance. Each supplemental payment would be subject to the availability of funds specifically provided for the particular type of allowance in advance by an appropriations act. These sections would require an annual adjustment to the supplemental payment amounts in relation to the Consumer Price Index, applicable to deaths occurring in subsequent fiscal years. They would require VA to periodically estimate the funding needed to provide supplemental payments for all eligible recipients for the remainder of the fiscal year in which such an estimate is made and the appropriations needed to provide all eligible recipients supplemental payments in the next fiscal year. VA would have to submit these estimates to the

Committees on Appropriations and Veterans' Affairs of the Senate and House of Representatives four times a year. Finally, these sections would authorize appropriations for these purposes. These changes would be effective October 1, 2009, and apply to deaths occurring on or after that date.

Veterans' advocates have argued for higher payments because the current allowances generally do not cover present-day burial and funeral costs or plot expenses. Advocates have also pushed for annual cost-of-living increases for funeral, burial, and plot benefits. However, VA cannot support the bill as drafted. The supplemental benefits would only be available up to the point at which discretionary funding is exhausted, which could lead to inequities in the level of benefits available to individuals. VA has not supported similar legislation in the past because funding a single benefit from multiple sources (e.g., from the mandatory Compensations, Pensions, and Burial account and a new discretionary account) can create numerous complications in administration and represents an unsound budgeting practice. Finally, the frequent reporting requirements to Congress would be administratively burdensome and would distract VA from providing Veterans with timely claims adjudication and payment.

We estimate that enactment of section 301 of this bill would result in costs of $106.3 million during the first year, $569.2 million over 5 years, and $1.3 billion over 10 years. We estimate that enactment of section 302 of this bill would result in costs of $30.4 million during the first year, $162.5 million over 5 years, and $367.7 million over 10 years. No administrative costs are associated with this bill.

TITLE IV—OTHER MATTERS

Section 401(a) would add to the list of disabilities that qualify a compensation-receiving veteran or an active duty servicemember for assistance in obtaining an automobile or other conveyance or adaptive equipment an additional disability—a severe burn injury, as determined pursuant to VA regulations. Section 401(b) would make various stylistic changes to section 3901 of title 38, United States Code.

Section 402(a) would require VA to make a supplemental payment in addition to the currently required statutory payment for the purchase of an automobile or other conveyance, but only if funds are specifically appropriated in advance for that purpose. Specifically, it would require the supplemental payment to equal the difference between the amount of payment that would be made if the maximum amount were $22,484 and the current $11,000 amount authorized by section 3902(a).

Section 402(a) would also require VA to annually increase a specified adjusted amount ($22,484) to 80 percent of the average retail cost of new automobiles for the preceding calendar year. It would require VA to periodically estimate the funding needed to provide supplemental payments for all eligible recipients for the remainder of the fiscal year in which such an estimate is made and the appropriations needed to provide all eligible recipients supplemental payments in the next fiscal year and to submit these estimates to the Committees on Appropriations and Veterans' Affairs of the Senate and House of Representatives four times a year.

Finally, section 402(c) would authorize appropriations for these purposes, and, under section 402(d), these changes would be effective October 1, 2009, and apply to payments made under section 3902 on or after that date.

We plan to review the scope of our existing authority to determine if there are circumstances under which severe burn victims are not adequately covered. In any event, VA cannot support the bill as drafted. The supplemental benefits would be available only up to the point at which discretionary funding is exhausted, which could lead to inequities in the level of benefits available to individuals. VA has not supported similar legislation in the past because funding a single benefit from multiple sources can create numerous complications in administration and represents an unsound budgeting practice. Finally, the frequent reporting requirements to Congress would be administratively burdensome and would distract VA from providing Veterans with timely claims adjudication and payment. For an estimate of the costs associated with the increase section 402 would provide, please see our comments regarding S. 820.

S. 820 "VETERANS MOBILITY ENHANCEMENT ACT OF 2009"

S. 820, the "Veterans Mobility Enhancement Act of 2009," would increase from $11,000 to $22,500 the maximum amount of assistance VA is authorized to provide an eligible person to obtain an automobile or other conveyance. It would also require VA to increase that amount, effective October 1 of each year (beginning in 2010), to an amount equal to 80 percent of the average retail cost of new automobiles for the preceding calendar year. It would require VA to establish the method for deter-

mining that average retail cost and authorize VA to use data developed in the private sector if VA determines that the data are appropriate.

We understand the importance of providing sufficient resources for vehicles or adaptive equipment to servicemembers and veterans who rely on them, but we cannot support this bill at this time. In order to best support the goals of this program, we will need time to review the appropriate amount to provide for this benefit payment.

We estimate benefit costs of $16.2 million in the first year and $159.9 million over ten years.

S. 842

Section 1 of this bill concerning mortgages and mortgage foreclosures relates to the Servicemembers Civil Relief Act, a law primarily affecting active duty service personnel. Accordingly, VA defers to the views of DOD with regard to that section.

Section 2 of this bill would authorize VA to purchase a VA-guaranteed home loan from the mortgage holder, if the loan is modified by a Bankruptcy Judge under the authority of 11 U.S.C. § 1322(b). Specifically, it would permit VA to pay the mortgage holder the unpaid balance of the loan, plus accrued interest, as of the date a bankruptcy petition is filed. In exchange, the mortgage holder would be required to assign, transfer, and deliver to the Secretary all rights, interest, claims, evidence, and records with respect to the loan.

VA is aware of legislation that, if enacted, would eliminate the apparent incongruity between section 2 of this bill and the current Bankruptcy Code. Section 103 of H.R. 1106, as passed by the House of Representatives on March 5, would eliminate the prohibition against modifying mortgages on principal residences. Additionally, the section 2 provision appears duplicative of the authority that would be provided to VA in section 121 of H.R. 1106. VA cannot support any additional repurchasing authority until the budgetary impacts of such authority on existing and future cohorts of loans can be reviewed. Because VA cannot determine the effects of section 2 as a stand-alone provision, VA cannot currently estimate the costs or savings associated with the provision.

Section 103 of H.R. 1106, as passed by the House of Representatives on March 5, would eliminate the prohibition against modifying mortgages on principal residences. Additionally, the section 2 provision appears duplicative of the authority that would be provided to VA in section 121 of H.R. 1106. VA cannot support any additional repurchasing authority until the budgetary impacts of such authority on existing and future cohorts of loans can be reviewed. Because VA cannot determine the effects of section 2 as a stand-alone provision, VA cannot currently estimate the costs or savings associated with the provision.

S. 847

We did not have sufficient time before this hearing to develop a position on this bill, but will provide our position to the Committee in writing for the record.

DRAFT CLARIFICATION OF CHARACTERISTICS OF COMBAT SERVICE ACT OF 2009

We did not have sufficient time before this hearing to develop a position on this bill, but will provide our position to the Committee in writing for the record.

A DRAFT BILL TO MODIFY THE COMMENCEMENT OF THE PERIOD OF PAYMENT OF ORIGINAL AWARDS OF COMPENSATION FOR VETERANS WHO ARE RETIRED OR SEPARATED FROM THE UNIFORMED SERVICES FOR DISABILITY

We did not have sufficient time before this hearing to develop a position on this bill, but will provide our position to the Committee in writing for the record.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions you or the other members of the Committee may have.

ADDITIONAL WRITTEN VIEWS SUBMITTED BY VA AFTER THE HEARING

THE SECRETARY OF VETERANS AFFAIRS,
Washington, DC, May 14, 2009.

Hon. DANIEL K. AKAKA,
Chairman,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to provide you with the views of the Department of Veterans Affairs (VA) on the following bills: S. 315, S. 847, S. 919, and a draft bill to modify the commencement of the payment of original awards of compensation for veterans who are retired or separated from the uniformed services for disability. These bills were included on the Senate Veterans' Affairs Committee agenda for the April 29, 2009, hearing, but VA was unable to provide its views in time for that hearing. We are also providing cost estimates for S. 514 and section 203 of S. 728, as promised during the hearing.

S. 315 "VETERANS OUTREACH IMPROVEMENT ACT OF 2009"

S. 315, the "Veterans Outreach Improvement Act of 2009," would require the Secretary of Veterans Affairs to establish a separate account and three separate subaccounts for the funding of outreach activities for each of VA's three major benefits administrations: the Veterans Benefits Administration (VBA), the Veterans Health Administration (VHA), and the National Cemetery Administration (NCA). In requesting its budget for each fiscal year, VA would have to separately state the amount requested for outreach activities for each such administration, as well as the Department as a whole. S. 315 would require the Secretary to establish, maintain, and review procedures for ensuring the effective coordination of outreach activities within VA. It would also authorize VA to make grants to state and local governments and nonprofit community-based organizations for the purposes of carrying out, coordinating, and improving outreach and assistance in the development and submittal of benefit claims. In addition, a Veterans agency of a state receiving a grant under S. 315 could use the grant funds or award all or any portion of the grant to local governments, other public entities, or nonprofit community-based organizations in that state.

VA supports the bill's objectives of improving outreach to Veterans and better coordinating and supporting outreach efforts with state Veterans agencies, county Veterans service offices, and nonprofit community-based organizations. VA requests that the Committee forbear legislation until a comprehensive review of outreach efforts by the Department is concluded, as detailed below.

Regarding the effective coordination of outreach activities within the Department, the Secretary of Veterans Affairs has already tasked the Office of Intergovernmental Affairs (IGA) with this responsibility. IGA will conduct a Department-wide audit of VA's outreach to better coordinate efforts, share resources, unify communication with veterans, and set a baseline for measuring future success.

We also recommend that legislation providing grants to stakeholders to conduct outreach on VA's behalf await a VA determination about whether that is the most effective way to augment our outreach activities. IGA plans to conduct focus groups with Veterans and representatives of state Veterans agencies, county Veterans services offices, tribal governments, Veterans Service Organizations, Military Service Organizations, nonprofit community-based organizations, and other stakeholders to determine the most effective ways to coordinate and support their outreach activities. With information provided by the internal audit and the focus groups, IGA will work with VBA, VHA, NCA, and other VA offices to develop a veteran-centric, results-driven, forward-looking outreach plan using 21st-century technology to enhance outreach efforts. The plan will identify specific ways VA can work with stakeholders to ensure that all veterans and their families know what benefits they are entitled to and understand how to access them.

VA cannot provide a cost estimate for S. 315 at this time because it is unclear what the size of the outreach effort would be and how it would interact and overlap with existing functions.

S. 847

Currently, section 3695(a) of title 38, United States Code, limits the aggregate entitlement for any person who receives educational assistance under two or more of the programs listed in that section to 48 months. This limitation is applicable, most notably, to the Montgomery GI Bill Active Duty (MGIB-AD) program (chapter 30), the Vietnam Era Assistance Program (chapter 32), the Survivors' and Dependents'

Educational Assistance (DEA) program (chapter 35), the new Post-9/11 GI Bill (chapter 33), the Montgomery GI Bill Selected Reserve program (chapter 1606 of title 10), and the Reserve Educational Assistance Program (chapter 1607 of title 10). Section 1(a) of S. 847 would remove the DEA program from this list of educational assistance programs with a 48-month-aggregate-benefit limitation effective on the date of the enactment of the Act. This amendment would allow an individual who earns entitlement based on his or her own service in the Armed Forces not to have such entitlement reduced because they received benefits under the DEA program.

Section 1(b) of S. 847 states that such law would not revive any entitlement to DEA or other assistance under the provisions of law listed under section 3695(a) that was terminated by that section prior to enactment of the Act. Section 1(c) of S. 847 would revive, however, any entitlement to assistance under the provisions of law listed under section 3695(a) that was reduced because the individual used his or her DEA benefits if, the day before enactment of the Act, the individual had not used a total of 48 months entitlement.

(We note that section 1(c) of S. 847 could be read to mean that those individuals who used 48 months of entitlement (including DEA benefits) before date of enactment and who are still within their delimiting period could also have their entitlement recalculated without consideration of their use of DEA benefits.)

The President's Budget includes numerous programs to support our Veterans and their families. However, we are unable to support this measure at this time. VA has not yet begun to administer the new Post-9/11 GI Bill benefit, a generous new benefit for Veterans that includes authority for some servicemembers to transfer eligibility to their dependents. We need more time to study how this new program impacts usage of all VA education benefits before supporting any changes to the benefit package. In addition, VA cannot support this measure because no funding for such a proposal is included in the Administration's fiscal year 2010 budget.

VA does not have the specific data necessary to cost this proposal. While VA can determine the number of participants who used prior VA training and the amount of entitlement used in previous programs, we cannot extract the specific DEA population. Further, VA has no way of determining how many servicemembers elected not to participate in the MGIB-AD program because of their prior use of DEA benefits or how many individuals potentially eligible for the Post-9/11 GI Bill are or were eligible for chapter 35 benefits.

S. 919 "CLARIFICATION OF CHARACTERISTICS OF COMBAT SERVICE ACT OF 2009"

S. 919, the "Clarification of Characteristics of Combat Service Act of 2009," would amend 38 U.S.C. § 1154(a) to revise the requirements for VA regulations pertaining to service connection of disabilities. Currently, section 1154(a) mandates VA regulations requiring that, when adjudicating a claim for service connection, due consideration be given to the places, types and circumstances of a Veteran's service as shown by the Veteran's service record, official history of each organization in which the veteran served, the Veteran's medical records, and all pertinent medical and lay evidence. In addition to these regulations, S. 919 would require regulations requiring that, in the case of a Veteran who served in a particular combat zone, VA must "accept credible lay or other evidence as sufficient proof that the veteran encountered an event that the Secretary specifies in such regulations as associated with service in particular locations where the veteran served or in particular circumstances under which the veteran served in such combat zone." Under S. 919, the term "combat zone" would be defined in accordance with section 112 of the Internal Revenue Code of 1986 or a predecessor provision of law.

VA opposes enactment of S. 919 for the following reasons. S. 919 would require VA to implement a complex scheme under which VA would be required to specify in regulations "events" that are "associated with service in particular locations" or "in particular circumstances under which the veteran served in" combat zones designated under 26 U.S.C. § 112. The breadth of such a task would be mammoth. Although S. 919 refers to "service in particular locations" and in "combat zones," hostilities can occur anywhere around the globe, overseas as well as on American soil, and thus, to be inclusive, the regulations required by S. 919 would have to cover the entire world. In addition, the language of the proposed amendment is too vague, offering no guidance on what would constitute an "event" that is "associated with service in particular locations where the veteran served or in particular circumstances under which the veteran served in * * * combat." Further, VA does not have the expertise to define events associated with service in particular locations or particular circumstances of combat.

We also oppose defining the term "combat zone" in accordance with 26 U.S.C. § 112. Section 112(c)(2) of title 26, United States Code, defines "combat zone" as any area that the President by Executive Order designates as an area in which U.S. Armed Forces are engaging or have engaged In combat. There are currently three combat zones designated by Executive Order (26 U.S.C. § 112 note), including the airspace above each: (1) Persian Gulf, Red Sea, Gulf of Oman, certain portions of the Arabian Sea, Gulf of Aden, and total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and United Arab Emirates, beginning January 17, 1991; (2) Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, Adriatic Sea, and Ionian Sea north of the 39th parallel, beginning March 24, 1999; and (3) Afghanistan, beginning September 19, 2001. Two other Executive Orders (26 U.S.C. § 112 note) previously designated the following areas as combat zones: (1) Vietnam and adjacent waters within certain limits, for certain periods of service; and (2) Korea and adjacent waters, for service during certain periods.

VA opposes defining "combat zone" in accordance with 26 U.S.C. § 112 because of the breadth of the title 26 definition and implementing regulations and because it would exclude certain Veterans who served during other periods of hostilities. Combat activities have not been terminated by the President in three of the currently designated combat zones. For example, members who served in Bahrain after fighting ceased in the first Persian Gulf War and before fighting began in Operation Enduring Freedom (OEF) on October 6, 2001, or Operation Iraqi Freedom (OIF) on March 20, 2003, are covered under one of these Executive Orders. If VA regulations promulgated pursuant to S. 919 provided a reduced burden of proof to all veterans covered by these Executive Orders, Veterans who served in Bahrain during a period of relative calm would have the same reduced burden of proof as Veterans who served in Bahrain during the first Persian Gulf War or OIF. Further, these Executive Orders do not cover service in World War II and certain smaller engagements, such as Grenada.

Furthermore, 26 CFR § 1.112–1(e), which implements 26 U.S.C. § 112, provides that a member who performs military service in an area outside the area designated as a combat zone under 26 U.S.C. § 112(c)(2) is deemed to have service in that combat zone "while the member's service is in direct support of military operations in that zone" and the member is qualified for special pay under 37 U.S.C. § 310. For example, the Department of Defense (DOD) has certified service in Kyrgyzstan and Uzbekistan beginning on October 1, 2001, and in Yemen beginning on April 10, 2002, as service in direct support of OEF and service in Israel between January 1, 2003, and July 2003 and service in Jordan, beginning March 19, 2003, as service in direct support of OIF.

There is no termination date for service in certain areas designated by DOD as service in direct support of operations in a combat zone. If VA regulations provided a reduced burden of proof to all veterans covered by 26 CFR § 1.112–1(e), veterans who served, for example, in Jordan in 2008 and 2009 would have the same reduced burden of proof under the proposed rule as veterans who served in Jordan immediately after hostilities began in OIF.

We also believe that S. 919 is unnecessary. Section 1154(b) of title 38, United States Code, already provides a relaxed evidentiary standard for service connection of disabilities that result from a veteran's engagement in combat with the enemy. The purpose of 38 U.S.C. § 1154(b) is to recognize the hardships and dangers involved with military combat and to acknowledge that official documentation is unlikely during the heat of combat. As a result, Veterans who engaged in combat with the enemy and file claims for service-connected disability benefits related to that combat are not subject to the same evidentiary requirements as non-combat veterans but rather are afforded a relaxed evidentiary standard to ensure they are not disadvantaged by the circumstances of their combat service in proving their benefit claims. Many of the Veterans who served in the combat zones designated by Executive Orders likely qualify for the reduced evidentiary standard in section 1154(b). On the other hand, there is no such need for a lowered evidentiary standard for veterans who did not engage in combat with the enemy but did serve in a combat zone designated by Executive Order because evidence necessary to establish service connection is likely to be more easily obtained through routine military record keeping. We believe that this approach is fair and equitable.

VA cannot provide specific benefit costs associated with enactment of S. 919 due to its lack of clarity. There are no data available to assess the numbers of claims that would be granted based on application of regulations promulgated under this provision.

A DRAFT BILL TO MODIFY THE COMMENCEMENT OF THE PERIOD OF PAYMENT OF ORIGINAL AWARDS OF COMPENSATION FOR VETERANS WHO ARE RETIRED OR SEPARATED FROM THE UNIFORMED SERVICES FOR DISABILITY

This unnumbered draft bill would require VA to pay compensation awarded based on an original claim to veterans who retired or separated from service for a disability as of the effective date of the award of compensation. Current law prohibits the payment of benefits based on an award or an increased award of compensation for any period before the first day of the calendar month following the month in which the award or increased award became effective. The draft bill would also provide that, in the case of Veterans retired or separated from active service due to disability who must provide a waiver of retired pay in order to receive VA benefits, the effective date of the waiver would be the effective date of the award of compensation if the waiver is filed not later than 30 days after retirement or separation from military service. Currently, under 38 U.S.C. § 5111(b)(2), if a person in receipt of retired or retirement pay would also be eligible to receive VA compensation upon the filing of a waiver, such waiver does not become effective until the first day of the month following the month in which such waiver is filed. The draft bill would apply to awards of compensation based on original claims that become effective on or after the date of enactment.

VA does not support the draft bill because it would provide up to one additional month of VA compensation for only one group of Veterans, i.e., Veterans who retire or separate from service due to disability. Also, we are unaware of a need to expedite payment of VA compensation to this single group of disabled Veterans. Veterans who retire or separate from service because of disability currently begin receiving disability retirement pay shortly after discharge from service and then receive VA compensation after the military retired pay centers have processed waivers provided by the Veterans and military retirement pay has been reduced by an amount equal to the VA compensation to which the veterans are entitled. We note as well that many of the Veterans who would be entitled to additional VA compensation under this bill may also be entitled to combat-related special compensation under 10 U.S.C. § 1413a and to concurrent receipt of military retired pay under 10 U.S.C. § 1414.

VA estimates the cost associated with this draft bill, if enacted, would be $4.5 million for the first year and $49.2 million over 10 years. Also, there would be substantial administrative cost to reprogram the VETSNET system to provide these payments.

S. 514 "VETERANS REHABILITATION AND TRAINING IMPROVEMENTS ACT OF 2009"

Section 4 of S. 514, the "Veterans Rehabilitation and Training Improvements Act of 2009," would remove the limitation on the number of veterans who may be provided programs of independent living. VA estimates that there would be no costs associated with this section if enacted. The current cap of 2,600 participants has not been reached in the past two fiscal years, and the number of participants has actually decreased from 2,115 cases in 2007 to 1,728 cases in 2008. This trend indicates that the program is not growing at this time and removing the limit of 2,600 participants would not result in additional participants or cost. Therefore, VA believes this legislation to be unnecessary.

SECTION 203 OF S. 728

Section 203 would increase monthly rates of dependency and indemnity compensation (DIC) for disabled surviving spouses, increase the maximum and minimum monthly rates of DIC payable to parents, provide increased monthly payments for parents who, by reason of disability, are permanently housebound but do not qualify for aid and attendance, and codify increases already made in the annual income limits applicable to parents' DIC. The new rate of DIC for a housebound parent and the minimum monthly amounts of parents' DIC would be subject to annual increases indexed to cost-of-living increases in Social Security benefits. The amendments made by section 203 would become effective on October 1, 2009, and would apply to DIC payable for months beginning on or after that date. However, there would be no cost-of-living increase in the minimum monthly DIC rates during fiscal year 2010. VA does not support section 203 because these proposed increases to DIC are not necessary to achieve the goals of the program.

VA estimates the cost associated with this amendment, if enacted, to be $4.6 million in the first year and nearly $49.6 over 10 years.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ERIC K. SHINSEKI.

Chairman AKAKA. Thank you very much, Mr. Mayes, for your testimony.

I am going to call on Senator Burr, the Committee's Ranking Member, for his opening statement, after which I'll come forward with questions to you.

STATEMENT OF HON. RICHARD BURR, RANKING MEMBER, U.S. SENATOR FROM NORTH CAROLINA

Senator BURR. Mr. Chairman—I thank the Chairman and I would ask unanimous consent that my statement be part of the record. And my apologies to our witnesses today, but D.C. traffic is somewhat unpredictable, especially when it rains; and trying to get back in after I was dumb enough to leave the city this morning was a big mistake. I thank you.

[The prepared statement of Senator Burr follows:]

PREPARED STATEMENT OF HON. RICHARD BURR, RANKING MEMBER, U.S. SENATOR FROM NORTH CAROLINA

Thank you, Mr. Chairman. Welcome to you and to our witnesses. I'd also like to extend a special welcome to the military spouses who are with us today. Thank you all for being here and, more importantly, thank you for the contributions and sacrifices you make every day on behalf of our Nation.

I know we have a long list of bills to discuss today, so I will try to keep my remarks brief. But I do want to take a few moments to comment on three bills I have been working on. The first is S. 475, the Military Spouses Residency Relief Act.

In recent decades, there has been a growing recognition that military spouses play a very important role in the success of our Armed Forces. In fact, "Military Spouse Day" was first proclaimed by President Reagan 25 years ago to recognize (quote) "the profound importance of spouse commitment to the readiness and well-being of servicemembers . . . and to the security of our Nation."

Today, the importance and sacrifices of military spouses are just as profound. They move around the country and the world in support of our Nation's servicemembers. They leave behind their homes, friends, and jobs in order to put servicemembers and the military ahead of their own needs.

Unfortunately, current laws do little to ease the burden on military spouses and sometimes even add to their confusion and their costs. Under the Servicemembers' Civil Relief Act, the servicemember can continue to vote in the state they consider home, but the spouse cannot. The servicemember's military pay is taxed only in their home state, but the spouse may have to file tax returns in every state they live in. And, in many states, the family assets have to be held solely in the servicemember's name in order to protect them from being taxed by those states.

I'm sure we can all understand the headaches this can cause for military families, as they move to a new state every few years. But, what's worse is the message this sends to military spouses. As the National Military Family Association put it back in 1992 (quote), "the current situation has left many military spouses feeling they are perceived as excess baggage."

Mr. Chairman, I hope we can all agree that this situation should not be allowed to continue. It's time that we finally update our laws to reflect the important role that military spouses play and the tremendous sacrifices they make. I believe this bill would take a step in that direction.

It would allow military spouses to vote and pay taxes in their home states. This should reduce some of the confusion and hassles of moving every time the servicemember is ordered to a new duty station. This bill will also allow military spouses the flexibility to hold property in their own names, something the rest of us probably take for granted.

Perhaps more importantly, it will send a clear message to military spouses that we, as a Nation, appreciate their sacrifices and are grateful for the contributions they make every day to the success of our Armed Forces.

I'm pleased that this bill already has 24 Senate cosponsors, including a majority of Members of this Committee. A similar bill introduced by Representative John Carter has the backing of over 90 members of the House. With that widespread support, I hope we can move this bill quickly and provide the long-overdue relief that these unsung heroes of the Armed Forces deserve.

Mr. Chairman, the second bill I want to discuss would eliminate the delay—now required by law—in how soon VA disability payments begin after a veteran is medically discharged from the military. It would allow these veterans to leave the military at whatever time best suits their needs, without the stress and financial burden caused by a delay in receiving their VA disability checks. I hope this would help injured servicemembers experience a more seamless transition from active duty to civilian life.

The final bill I want to mention would allow more veterans, such as those with severe Traumatic Brain Injuries, to receive higher amounts of monthly aid and attendance benefits. This would provide them with the financial tools to arrange whatever services they need to live in their own homes—rather than being institutionalized—and to integrate as fully as they can into their communities.

For veterans with Traumatic Brain Injuries, like Ted Wade from North Carolina, it would allow them to choose how their needs will be met, give them more flexibility and independence, and ultimately improve the quality of their lives.

Mr. Chairman, I appreciate you calling this hearing to discuss these and other bills affecting veterans' benefits. I look forward to working with you and the Members of this Committee to advance legislation that will help improve the lives of servicemembers, veterans, and their families.

I thank the Chair.

Chairman AKAKA. Without objection, your statement will be placed in the record.

Mr. Mayes, your testimony argues that a review of the Compensation Program may have implications for the future of the vocational rehabilitation programs. When will you be in a position to fully evaluate the adequacy of the living allowance given to voc rehab participants?

Mr. MAYES. Mr. Chairman, there are a couple of things at play regarding changes to the subsistence allowance for the vocational rehabilitation benefit. One, of course, is the Econ System study that the Department initiated last year. Economic Systems, Inc., as part of that study, is looking at the compensation program. They looked at transition assistance, and as you know, the Veterans Benefits Improvement Act of 2008 required us to report the Secretary's finding to Congress. And that report is due to Congress in May.

So, part of that review was to look at the transition benefits available to veterans. But I think more importantly are the implications of the changes to the education benefit with respect to the Chapter 33 benefit that we are in the process of executing right now. Because the amount or the rate of payment to veterans who will be participating in that program is going to be significantly more in many cases than what they are getting under the Chapter 30 program, we are trying to understand if veterans would indeed switch over from the Chapter 31 program to the Chapter 33 program. And if that is the case, then the number of veterans availing themselves of the 31 program would be reduced. And it might change our position somewhat with respect to what we can do with the subsistence allowance.

Chairman AKAKA. Thank you.

Mr. Mayes, you mentioned that VA's 2004 evaluation found that 79 percent of parents whose children died in service to our country have incomes at or below the poverty line. From my vantage point,

I find it insulting that these low income parents receive a meager $5.00 per month under the current program. Will you please provide for the record revised views of this section that takes into account the 2004 evaluation?

Mr. MAYES. Yes, Mr. Chairman. Absolutely.

We need to go back and review not just the 2001 study but the 2004 study and make sure that we are talking very closely with staff from your Committee to make sure we understand the intent and that we are consistent with our program objectives. We will do that, sir.

[See below for Mr. Mayes' response.]

Chairman AKAKA. Mr. Mayes, VA recognizes the need to provide sufficient resources for vehicles and adaptive equipment for veterans who rely on them. We also have wide recognition from everyone involved in this issue that the current benefit is inadequate, yet your testimony suggests that even more time is needed to determine what an appropriate amount would be.

My question to you is how much time do you think VA needs to determine an appropriate amount for the benefit?

Mr. MAYES. Mr. Chairman, I think one of the values of these hearings is it forces us to dig and to take a look very closely at what we are doing. And we've done that. I've asked my policy staff to take a close look at the automobile allowance.

I really have two questions from a policy point of view. Should the allowance compensate fully for the purchase of an automobile or subsidize the purchase of an automobile? And the second policy question is, what's a reasonable amount for the purchase of an automobile? And prior to this hearing we didn't have time to reach a conclusion on that, which is why I was not able to support the bill as drafted at this time.

We are looking at that. I am asking for that in a matter of weeks so that we can form a firm position either with respect to a legislative proposal or working with the Committee staff so that we can reach some consensus on what that should be. So I think—I would like to give myself a little bit of wiggle room—within 4 or 5 weeks we will be ready to talk more about that.

[The response from Mr. Mayes follows:]

RESPONSE TO REQUESTS ARISING DURING THE HEARING BY HON. DANIEL K. AKAKA TO BRADLEY G. MAYES, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Question 1. Will you please provide for the record revised views of the draft versions of S. 728, section 203, that takes into account the 2004 program evaluation?

Response. As mentioned in previous testimony, VA supports cost-of-living increases in the annual income limit applicable to parents' DIC. VA's concern is that arbitrarily increasing the minimum amount from $5 to $100 represented a departure from the needs-based principles underlying the Parents' DIC program. These principles were enacted in 1956 by Public Law 6–811, which designated the program as a needs-based income support program for the surviving parents of veterans who died in service or after service due to service-connected disabilities.

As part of an evaluation of the Parents' DIC Program, Economic Systems, Inc., proposed that VA have an additional outcome of the program, specifically that parents who receive DIC view the program as a source of recognition and appreciation

by the Nation for the loss of a child due to service to our country.[1] Another finding from the study was that parents often did not apply for DIC for years after becoming eligible because they were not aware of the benefit.[2] An important component of showing parents the recognition and appreciation they deserve is performing adequate outreach to make sure that all eligible parents understand and receive the benefits to which they are entitled.

The primary recommendation from the previous evaluation of the Parents' DIC Program was to increase the DIC benefit amount. In recent years, Congress has authorized such increases.[3] Parents that currently receive a minimum of $5 per month represent recipients who have countable family income at the higher end of the income-limitation chart. For example, parents who are still married and have an annual income between $6,638 and $18,087 currently receive $5 per month. VA understands the idea of paying parents $5 per month in DIC payments carries a negative connotation, despite the fact that those receiving this amount have more income and are likely more financially stable than those receiving higher amounts of DIC. If the minimum payment were increased to $100 per month, then modifications to the sliding scale payment formula are necessary to prevent inequity and unfairness to some recipients whose income levels fall just below the ranges that warrant the minimum payment amount. If the minimum payment amount is increased, the factors previously discussed should be considered.

Question 2. Regarding section 402, should the automobile allowance fully compensate for the purchase of an automobile or subsidize the purchase of an automobile, and what's a reasonable amount for the purchase of an automobile?

Response. As mentioned in our previous testimony, VA supports legislation to increase the automobile allowance provided that Congress enacts offsetting savings for the cost of this increase. VA acknowledges that the current automobile allowance limit of $11,000 is inadequate to reasonably assist with the purchase of a new vehicle.

In 1971, the automobile allowance was $2,800. We compared this allowance to information supplied by the Department of Energy in their fact sheet #520, "Average Price of a New Car, 1970 to 2006" dated May 26, 2008. According to the Department of Energy, in 1971 the average price of a new car (foreign or domestic) was $3,742. The $2,800 allowance under Section 3902 represented 75 percent of the new car price. In December 2003, the current allowance of $11,000 was incorporated into the statute. That allowance only represented 52 percent of the price of a new car, which was $21,169 according to the same fact sheet provided by the Department of Energy.

Because the Department of Energy's fact sheet does not provide 2008 data, we turned to the Web site Edmunds.com, a well-known and respected Web site used by many consumers and auto industry companies for information. We selected the five top-selling automobiles, in the vehicle classes of 1) van/minivan; 2) mid-size sedans; and 3) Sport Utility Vehicles (SUVs). We made the following assumptions when determining the current price of a vehicle: 1) 2009 model cars released in 2008; 2) 2008 prices for the base model of each vehicle; and 3) the five top-selling vehicles in its class. After assembling the data, we determined that the average price of a vehicle in 2008 was $22,557.

The automobile allowance should subsidize the purchase of an automobile. VA does not believe that the intent of the statute was to fully compensate the purchase of an automobile. Based on our research above, VA believes that the intent of the law in 1971 was to provide an automobile allowance at 75 percent of the average cost of a new vehicle. In order to get back to that original percentage, it is reasonable that the VA provide an automobile allowance up to $17,000 for those Veterans found eligible for this benefit. $17,000 represents 75% of the full cost of an automobile using our methodology above.

Chairman AKAKA. Mr. Mayes, I want to clarify something from VA's written testimony. Is it correct to say that VA recognizes the need for a veterans' cemetery in Colorado but in a different location than the one stated in the proposed legislation?

Mr. MAYES. I am going to refer that question to Mr. Hipolit on my right.

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[1] Evaluation of the Parents' DIC Program. ORC Macro, Economic Systems, Inc., Hay Group. Final Report, December 2004. Page 12.

[2] Ibid. Page ix.

[3] Ibid. Page 136.

Mr. HIPOLIT. I believe our testimony recognizes that the Fort Logan Cemetery will essentially be full by about 2019, and that at that later date there will be a need in Colorado for an additional cemetery after Fort Logan closes. So we are just beginning the planning stages now, I believe, looking forward to that period to see where an appropriate location might be. I think we've stated that something closer to the Denver area is probably going to be recommended. We are just starting the planning stages right now because that's a little ways down the road.

Chairman AKAKA. Thank you. Now I'd like to call on Senator Wicker for your questions.

Senator WICKER. Thank you very much.

Mr. Mayes, I really just have one question, and that's concerning language that was included in the Housing and Economic Recovery Act last year.

As I understand it, S. 842 has been introduced by Senator Kerry. It would amend the Servicemen's Civil Relief Act real property protection provision by eliminating the 9-month sunset that was included in the Housing Recovery Act. I understand you have reservations about this, as do I, but has the department used it at all during the time that it has been in effect? I understand—and correct me if I am wrong—that it would give the VA the authority, if it is a VA-backed loan, to pay the lender the balance of the mortgage. Am I correct on that? And has this provision been used at all? Give me your thoughts on that concept.

Mr. MAYES. Senator, I am going to be very direct. That's outside my area of expertise. That's a question that I would like to take for the record and make sure that we provide you with a very thorough, accurate response. It is my understanding, as it is yours, that, in fact, we could make the lender whole based on those provisions. But I'd like to take that for the record.

Senator WICKER. I am perfectly satisfied with that and look forward—I wonder how long that might take.

Mr. MAYES. I think we can do that in short-order.

Mr. HIPOLIT. I think we are providing things for the record by May 14. That is our target.

Senator WICKER. OK. Well, that will be here before we know it. So, thank you very much. And I don't have any other questions, Mr. Chairman.

[VA's response to Senator Wicker's question follows:]

RESPONSE TO REQUESTS ARISING DURING THE HEARING BY HON. ROGER F. WICKER TO BRADLEY G. MAYES, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION, DEPARTMENT OF VETERANS AFFAIRS

The following is in response to Senator Wicker's question about S. 842. VA would like to clarify that the bill appears to be addressing two separate statutes. The first concerns a revision to the Servicemembers Civil Relief Act, and the second applies to a previously introduced proposal to amend the Bankruptcy Code to allow judges to modify home mortgages.

SECTION 1

Section 1 of S. 842 proposes to eliminate the December 31, 2010, sunset of the Housing and Economic Recovery Act of 2008 (HERA) revision to the Servicemembers Civil Relief Act (SCRA). Accordingly, the HERA extension of the protection in the SCRA against mortgage foreclosures from 90 days to 270 days after active duty service ends would continue indefinitely.

Senator Wicker's question related to whether VA has "used" SCRA. Since it is a protection afforded active duty servicemembers, it is invoked by servicemembers with their servicers, without the involvement of the Department. Furthermore, it applies to servicemembers with any type of mortgage, not only VA guaranteed mortgages. As such, VA does not have any information on the extent to which the revised protections have been implemented since the passage of HERA. The SCRA is a law administered by the Department of Defense (DOD).

SECTION 2

Section 2 of S. 842 would amend 38 U.S.C. § 3732(a) to grant VA authority to purchase a VA-guaranteed home loan from the mortgage holder, in the event that the loan is modified by a Bankruptcy Judge under the authority of 11 U.S.C. § 1322(b). Specifically, VA would be permitted to pay the mortgage holder the unpaid balance of the loan, plus accrued interest, as of the date of the filing of the petition under Title 11. In exchange, the mortgage holder would be required to assign, transfer, and deliver, to the Secretary, all rights, interest, claims, and records, with respect to the loan.

For the purposes of this response, VA assumed that Senator Wicker's question related to VA's existing authority for purchasing guaranteed loans. VA has used its existing authority in 38 U.S.C. § 3732(a) for many years to acquire VA-guaranteed home loans in situations where loan holders have been unwilling or unable to extend further forbearance. This authority is exercised when VA's own analysis indicates that, despite the loan holder's decision, the veteran has in fact resolved the issue that created a delinquency and is able to resume regular monthly payments.

VA typically reamortizes acquired loans and reduces the interest rate to make the payments affordable. Increased loss mitigation efforts by private loan holders (specifically an increase in the number of loan modifications) have reduced the need for VA to refund loans, although this may change due to the current economic situation.

Chairman AKAKA. Thank you very much, Senator Wicker. Let me call on Senator Burris for his questions.

STATEMENT OF HON. ROLAND W. BURRIS, U.S. SENATOR FROM ILLINOIS

Senator BURRIS. Thank you Mr. Chairman and Ranking Member Burr.

I'd like to naturally extend my warm welcome to our guests who are here. I am looking at all this legislation and just wondering where do I start. It is like the kid in the candy store in terms of which ones I want to pick. But I am excited about the agenda. I am a cosponsor on quite a few of these bills, especially with the Veterans' Cost-of-Living Adjustment Act of 2009 and the Veterans' Rehabilitation and Training Improvement Act of 2009. We must make sure that we can get these passed. Of course, I support many of these other items. I hope we can utilize the expertise gathered here today to gain some consensus on this agenda.

In terms of questions, Mr. Mayes, I want to know about Senate Bill 347. And do you believe that this bill could lower—from their current level of the TSGLI—payments for the loss of a non-dominant hand? Do you have any comments on that?

Mr. MAYES. Senator, I will refer that question to Mr. Lastowka, who heads our insurance program.

Chairman AKAKA. Mr. Lastowka, please.

Mr. LASTOWKA. Senator, we believe that the legislation is not necessary. We believe the current law provides the Secretary the authority to set a different level of payment for the dominant hand. We considered the dominant hand question during the "Year-One TSGLI Review" which we promised the Committee we would undertake, and which we have submitted. In our discussions with medical and rehabilitation experts during the review, and focusing

on the purpose of TSGLI, which is to provide immediate financial relief, we felt that it was not appropriate to pay more for the dominant hand than the less dominant. In addition, paying a greater benefit for a dominant hand may have implications for assessing other traumatic injuries. We believe the payment is adequate for the intent of TSGLI; and we believe that for ongoing disability the Compensation Program—which does recognize a greater degree of disability for the dominant hand—is sufficient.

Senator BURRIS. Sir, I am left-handed. And if something were to happen to my left hand there would be a tremendous impact on me trying to learn to use my right hand.

Mr. LASTOWKA. I understand that, Senator.

Senator BURRIS. I hope that there's enough leeway in the Secretary's discretion to be able to make a difference. But I know how the bureaucracy works and that won't even get up to the Secretary. That will be laid down in some bureaucratic desk somewhere, and that poor veteran who lost his left hand will then be going around not 1 year, not 2 years, but 3 years trying to show that he's now trying to adjust to his right hand. And he probably wouldn't get any type of a response to it. So I hope that you all will take another look at that bill.

Mr. LASTOWKA. We are constantly looking at the question in terms of 2 years, 3 years, and in fact, the lifetime of the veteran. We believe the best avenue for compensating for the loss of the dominant hand is the VA Compensation Program, which would provide a greater long-term benefit. The purpose of the TSGLI program, on the other hand, is to take care of the immediate family needs of severely disabled servicemembers. But we will continue to look at not only this issue, but the program in general, sir.

Senator BURRIS. Thank you very much.

If there's a second round, Mr. Chairman, I'll probably have some questions for the second panel, if my schedule allows me to be here. But thank you very much, Mr. Chairman.

Chairman AKAKA. Thank you, Senator Burris.

And now I'd like to call on our Ranking Member, Senator Burr, and provide him with as much time as he needs.

Senator BURR. Thank you, Mr. Chairman. You're generous; and aloha.

I want to stay on the same theme that Senator Burris was on. We've now had several commissions over 50 years talking about the need to reform our disability compensation. What is the Administration's position on reforming disability compensation?

Mr. MAYES. Senator, I am the Director of the Compensation and Pension Program, and I've been doing this job almost 3 years. I thought I knew what we were doing until I got here.

I think that in the statute the Disability Compensation Program is clear in that we are supposed to make up the earnings gap that exists for a servicemember who is injured or suffers a disease while they are on active duty. And I like to think of it—as I've looked at this closely and reviewed what the VDBC said and the Institute of Medicine said, and Dole-Shalala said—as I've looked at these studies, I equate the Disability Comp Program to a Workman's Compensation Program in the civilian sector, only a very, very special program with very special features. Once you're in, you're in

for life. If your disability gets worse over your lifetime, then all you do is come and tell us. If it is substantiated, we pay you more money. If down the road you discover you have another disability that you believe is related to that service, there's no prohibition from claiming that and we will adjudicate that claim.

So I think, as I am looking at it, and as the VDBC looked at it and CNA looked at the data, generally they found that it is making up the earnings gap. There are some areas where we need some improvement. Neuropsychiatric disorders was cited by CNA, especially in the lower evaluation categories. But I think it is making up the earnings gap, which is the statutory intent of the program—the Disability Comp Program.

Senator BURR. And, with all due respect, I didn't ask you to evaluate the current program and whether it met the statutory requirements of filling in the earnings gap. I am getting at the heart of what I think Senator Burris was asking. If he's left-handed, he loses his left hand, there's not just the gap of compensation. There is a quality-of-life issue because he's got to learn to comb his hair with his right hand. He's got to learn to do everything with his right hand, not just make money.

And I think every Commission that's come back said a quality-of-life payment should be something that should be considered in the future, especially when we are in a conflict like we are now where the loss of limb is probably the more typical injury to a servicemember. And, you know, it shocks me to look back over the 50 years and see the similarities of every Commission that came out and the incredible predictability of the bureaucracy in Washington to say, well, you know what? It doesn't need to change. It is 50 years old and it really doesn't need to change.

I was just as frank with the last Administration as I will be with this one, and I'll do it as long as the Administration fights. Granted, I realize this is a very delicate balance that we've got to reach to try to design a compensation system that lives up to the expectations of the next generation of warriors, but also in some way takes care of the past generations that have become very comfortable with a system that says if you think you've gotten worse, then come in and we will increase your disability payment because the disability has gotten worse. Though, I think under today's standards—if we look at some of the items that we consider disabilities under our current system that have been paid since it was created—they are not disabilities today. They do not in any way impact one's earning capacity. There is no earnings gap but we pay them.

I am the first one to say that you can't go back and take it away, but we can be smart enough and bold enough to say it has got to be different in the future. That, when a servicemember loses an arm, the compensation package that's been in place for 50 years does not sufficiently cover that. Without a quality-of-life component to it, you just cannot look at that servicemember and say we've tried to make you whole.

So let me just ask real quick as it relates to severe Traumatic Brain Injuries and the need to get access to aid and attendance benefits, if they need them. The Disability Commission said, and I quote this, "The primary focus is on physical impairments and lo-

comotion. Very little emphasis is placed on cognitive or psychological impairments and the needs of those conditions for supervision and management as well as aid and attendance."

First of all, who qualifies for the higher levels of aid and attendance benefits today?

Mr. MAYES. I am going to refer that question to Mr. Hipolit. Before I do, though, I would like to say we did make a dramatic change to the regulation dealing with Traumatic Brain Injury. I think that was published last year, and we recognized that we've got to more adequately compensate for cognitive impairment. That regulation has facets that address cognitive impairment and also allow for the payment of aid and attendance at the L-rate for Traumatic Brain Injury.

But specific to your question, the higher level of aid and attendance, I'll defer to Mr. Hipolit.

Senator BURR. Thank you.

Mr. HIPOLIT. Yes, as Mr. Mayes mentioned, there are two levels of aid and attendance we pay. There's the L-rate, which is the standard rate. That can also be paid to some other people at some of the other levels in Section 1114. The higher rate is paid under section R–2. That's for a person who is in need of a higher level of care. That rate is basically for somebody who needs services in their home of a medical nature and who needs to have somebody come in to give them injections or other types of services.

So, it is essentially somebody who has a particularly severe disability who qualifies for the R category. And then in that category, if they need these health-related services in their home, those would be the persons who would qualify for the higher rate.

Senator BURR. Mr. Hipolit, would you agree with the Disability Commission that aid and attendance benefits currently do not focus on those individuals with cognitive impairments?

Mr. HIPOLIT. I think the standard aid and attendance benefit is more generally applicable, but the higher level of care doesn't focus on cognitive disability. The higher level of care is more focused on some other types of disabilities.

Senator BURR. So, VA would be aware of veterans who appear to need those benefits but do not currently qualify?

Mr. MAYES. We are exploring the possibility that maybe we need to modify the regulations to allow the higher level of aid and attendance for veterans suffering from Traumatic Brain Injury or severe cognitive impairment. The regulation that we published, though, specifically cites the possibility that we can pay aid and attendance at the L-rate. It directs our decisionmakers to consider aid and attendance at the L-rate when they are evaluating cognitive impairment under that particular diagnostic code—diagnostic code 8045 in our schedule.

The real question is that higher level. And the barrier to achieving that higher level of aid and attendance are the qualifying criteria—the losses or loss of use—to be in the zone to be able to be awarded the higher level at the R-rate. And that's what we are exploring from a policy point of view.

Senator BURR. And please understand, for all three of you, I have deep respect for what you do. This is not an issue that popped up yesterday. As a matter of fact, we now have 7 years of experience

in the current conflicts where the tragedy, if there is one, is that we've had Traumatic Brain Injuries come back every week and yet we still have a system that's talking about reviewing what we need to provide from the standpoint of the benefit package.

You know, I've got a soldier from North Carolina that was discharged from the military in Germany because they were convinced he would not live for the trip across the ocean. Much to his strong will he did. The worst mistake we could have made was to discharge him versus to keep him in the system. And I can tell you, today he does not qualify for the higher rate. And he needs everything that you've described. His wife—if she wasn't there, for goodness sakes, I don't know what would transpire. But he does not qualify for the higher rate. And this was a soldier that was going to die. That's how severe his injury was.

I've got a number of questions that I am going to submit in writing because they deal with legislation that I am in the process of putting together. But let me just plead with you. There's a human face behind every one of these issues. And I realize we may not be capable of doing disability reform comprehensively. Gosh knows—Mr. Chairman knows—I have tried to push it. And there's great reluctance up here to do it. It doesn't change my opinion of the great need for us to accomplish that. We need to sort this out. It is way too complicated, way too difficult, and it does not reimburse the individuals adequately, those that really deserve and need the reimbursement.

Now, I am not saying that people get something that they don't deserve. I think to ignore the fact that today's warriors have different expectations about their quality-of-life and what they can accomplish after the loss of a limb, is to stick our head in the sand and say, "You know what, over time they will become just like everybody else—happy to get a check." I am here to tell you that when we eliminate the opportunity to continue life as is for them, we've made a huge mistake. We have made a long-term strategic blunder if we do that.

So, I would ask you as you work on these things—and I know they are complicated and I know they take time—understand there is a sense of urgency to do it. The only mistake that we can possibly make is to do nothing and to accept the status quo as the benefit package that today's generation of warriors is going to receive for the rest of their life. And they'll be here in 50 years talking about 100 years' worth of studies into a disability compensation package that needed to be reformed, and they'll point to us as ones that let it pass under our watch. And I will assure you that will not be a thing that we will wear proudly.

Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much Senator Burr. I hope you had enough time for your questions and your comments.

Let me finish off with any further questions from Senator Burris?

Senator BURRIS. No, Mr. Chairman. I am OK. I have to head to the other committee.

Chairman AKAKA. Thank you very much.

Senator BURRIS. Thank you, Mr. Chairman.

Chairman AKAKA. Senator Begich, do you have any questions or statements?

Senator BEGICH. I am good right now.

Chairman AKAKA. Thank you very much.

I want to thank the first panel and I want to thank my Ranking Member for his profound statement to the panel and especially the VA. We have so much to do. I am glad you are devoted. We will continue to try to work together to get the responses that we need from you to improve the system.

Again, I want to thank you all for coming and spending the time with us. I look forward to working with you in the years to come. Thank you very much, first panel.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA, CHAIRMAN, TO THE DEPARTMENT OF VETERANS AFFAIRS

Question 1. VA currently has the authority to adjust the schedule of payments under TSGLI. Please describe the process by which qualifying losses were recommended to be added to the schedule during the TSGLI One Year Review.

Response. The Traumatic Servicemembers' Group Life Insurance (TSGLI) year-one review team consulted with medical experts, researched numerous medical journals and articles, reviewed TSGLI cases, analyzed trends, and conducted surveys of approved and disapproved claimants in order to recommend changes and additions to the TSGLI schedule of losses.

The team consulted with world-recognized experts in such fields as orthopedic surgery, trauma and wound ballistics, and burn management, who were on staff at facilities including Brooke Army Medical Center, U.S. Army Research Laboratory at Aberdeen Proving Grounds, U.S. Army Institute of Surgical Research, and Central Arkansas Veterans Healthcare System. Team members also personally interviewed medical personnel, patients, family members and caseworkers at Walter Reed Army Medical Center, National Naval Medical Center, Center for the Intrepid, and Richmond Department of Veterans Affairs (VA) Polytrauma Center. Many of the experts interviewed for the study made recommendations that were eventually adopted on how benefits should be enhanced or expanded. Additionally, a review of current medical literature on extremity loss, limb salvage, paralysis, and activities of daily living was also completed as part of the year-one review.

Team members personally reviewed over 200 approved and disapproved TSGLI claims, and analyzed data on the length of time injured servicemembers were hospitalized. A survey of TSGLI claimant satisfaction was also conducted and the results analyzed as part of this review effort. The team met with the branch of service TSGLI claims processing offices and heard from claims adjudicators on how TSGLI benefits could be improved or expanded based on their observations since the inception of the program. The team also met with advocacy groups like the Wounded Warrior Project in order to obtain feedback from their members on the benefit.

The team consulted with commercial insurance industry experts on the current practices of the Accidental Death and Dismemberment industry to determine if coverage offered through the TSGLI program was comparable to that provided by commercial insurers.

All of the recommendations included in the final TSGLI year-one review report came from the medical experts, advocacy groups, TSGLI branch of service processing offices, or claimants themselves.

VA's Insurance Service reviewed and assessed all the information obtained from the sources above to make a final determination on which losses should be covered by TSGLI. VA weighed factors such as the severity of the loss, the likely impact on the servicemember's family during rehabilitation, commercial practices, and the expressed congressional intent of the TSGLI legislation. This assessment resulted in the addition of four new losses to the original schedule of losses and expansion of the criteria for six existing losses.

Question 2. What is the breakdown of traumatic injuries that have been deemed as qualifying losses and compensated under the TSGLI program? For example, limb loss, loss of sight, Traumatic Brain Injury, etc?

Response. Attachment A provides the TSGLI schedule of losses. Attachment B contains a complete breakdown of all TSGLI losses, including the number and total payments approved for each schedular loss. [Attachments follow all VA responses.]

Question 3. In this year's *Independent Budget*, there is a section dedicated to the need to increase the amount of automobile grants and adaptive equipment. For this report, the average price of a new car is based on a figure provided by the National Automobile Dealers Association. Is there a reason VA would not also rely on this organization to determine the average price of a new car when determining the appropriate amount for the automobile benefit? If VA believes that the amount of the automobile benefit should be based on something other than the average price of an automobile, how would VA determine what that amount should be?

Response. There is no reason VA would not rely on data from the National Automobile Dealers Association to establish the average cost of a new automobile. VA is currently undertaking an analysis to determine the appropriate level for the allowance and whether the amount should fully cover the average replacement cost of a new automobile or a portion of the average cost. We anticipate completion of that analysis in the near future and will share our recommendation with the Committee once it is complete.

Question 4. In VA's Comments on the Government Accountability Office's Draft Report on "VA Vocational Rehabilitation and Employment: Better Incentives, Workforce Planning and Performance Could Improve Program," as Secretary Shinseki transmitted them to me on March 26, 2009, it was noted that current law does not provide for payment of subsistence allowance during a program consisting solely of employment services under the Chapter 31 program. It was further noted that VR&E Service drafted a legislative proposal for consideration by the Secretary. What is the status of that proposal and when might we expect to see it?

Response. VA is developing this proposal for consideration and possible inclusion in the legislative proposal package for a future budget cycle.

Question 5. During the hearing, a representative from VA attempted to explain why a veteran would qualify for the higher level of aid and attendance (A&A) under Title 38, Section 1114(r)(2), usually referred to as "R–2". Other than administering medication, what types of services are provided in the home for veterans receiving R–2 A&A? Of these services, are there any that a person with cognitive disabilities would not require?

Response. As explained in 38 CFR § 3.352(b)(2), the services contemplated under (r)(2) are personal health care services provided on a daily basis in the Veteran's home by a person who is licensed to provide such services or who provides such services under the regular supervision of a licensed health care professional, without which the Veteran would require hospital, nursing home, or other residential institutional care.

Personal health-care services include such services as physical therapy, administration of injections, placement of indwelling catheters, bowel management, the changing of sterile dressings, or similar services that require health care training or the regular supervision of a trained health-care professional.

Veterans with cognitive disabilities may require assistance with activities of daily living, such as feeding, bathing, dressing, etc. and may establish entitlement to aid and attendance at the rate prescribed in section 1114(l). Section 1114(r)(2) authorizes special monthly compensation (SMC) only when there is a need for a higher level of care than aid and attendance and the Veteran is entitled to SMC under 38 U.S.C. § 1114(o) or the maximum rate of SMC under section 1114(p) or the intermediate rate between 38 U.S.C. § 1114(n) and (o) plus the rate under 38 U.S.C. § 1114(k). Veterans with cognitive disabilities would be entitled to the additional allowance under section 1114(r)(2) only if they meet these requirements of the statute.

Question 6. Does VA currently have the authority to provide the R–2 rating as an extra-scheduled rating for Traumatic Brain Injury?

Response. VA does not have the authority to grant an (r)(2) rating on an extraschedular basis for Traumatic Brain Injury (TBI) rated under Diagnostic Code (DC) 8045 in the VA rating schedule. The newly promulgated criteria for assessing disability due to residuals of TBI include assessment of three areas of a Veteran's ability to function: cognitive, physical, and emotional/behavioral. Physical dysfunction due to TBI is evaluated under an appropriate DC, and cognitive impairment and other residuals of TBI not classified elsewhere in the rating schedule are rated under DC 8045. Thus, the area of functioning affected by a Veteran's TBI upon which the Veteran's TBI would be rated under DC 8045 do not include the types of disability that meet the statutory criteria for entitlement to SMC under 38 U.S.C. § 1114(r)(2).

Question 7. During oral testimony, it was stated that VA is currently reviewing whether Traumatic Brain Injury should be compensated at the higher Aid and Attendance level. When will VA's review be complete?

Response. VA intends to complete its review and make any policy recommendations that arise from it in the context of a future budget cycle.

Question 8. During the hearing, there was a lengthy discussion regarding the "quality of life" issue as it relates to disability. Has VA begun to formulate how "quality of life" would be defined if it were ever to factor into the compensation system?

Response. VA contracted with Economic Systems, Inc. to analyze providing compensation for loss of wage-earning capacity and quality of life (QOL). VA's report on this study and its implications regarding quality of life is forthcoming.

Question 9. If a person successfully overcame certain limitations, physical or mental, caused by his or her disability, would that person's quality-of-life be better, and therefore require less compensation, than a person who is unable to overcome similar limitations?

Response. This determination falls outside the scope of current VA authority.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. RICHARD BURR, RANKING MEMBER, TO THE DEPARTMENT OF VETERANS AFFAIRS

Question 1. I have been working on a bill to help veterans with severe Traumatic Brain Injuries get access to higher levels of "aid and attendance" benefits, if they need them. As the Veterans' Disability Benefits Commission said about these benefits, "The primary focus is on physical impairments and locomotion. Very little emphasis is placed on cognitive (e.g., TBI) or psychological impairments and the needs of those conditions for supervision and management as well as aid and attendance."

Question 1A. How many veterans suffering from severe Traumatic Brain Injury currently qualify for benefits under 38 U.S.C. 1114(l) but do not qualify for the higher levels of aid and attendance benefits?

Response. There are currently 165 Veterans service-connected for TBI, who are also in receipt of special monthly compensation (SMC) due to the need for aid and attendance at the level of section 1114(l). Section 1114(r) provides additional compensation to Veterans who are already entitled to SMC under 38 U.S.C. § 1114(o) or the maximum rate of SMC under section 1114(p) or to the intermediate rate between subsections (n) and (o) plus the rate under section 1114(k). The additional allowance provided in subsection (r)(1) based on the need for aid and attendance is the same level of care referred to in section 1114(l). Section 1114(r)(2) provides a higher allowance if the Veteran, in addition to needing regular aid and attendance, requires daily care, such as catheterization or injections, that must be provided by a person with medical training. None of the Veterans receiving SMC under section 1114(l) meet the requirements for additional allowances under 38 U.S.C. § 1114(r)(1) or (2).

Question 1B. How much additional compensation is provided to a veteran under section 1114(l), and do you believe that amount is sufficient compensation for an individual with severe Traumatic Brain Injury who requires assistance 24 hours per day?

Response. Presently, the statute provides that a single Veteran evaluated as 100 percent disabled for service-connected disabilities is entitled to receive $2,673 monthly. The same Veteran, if determined to be in need of regular aid and attendance would be entitled to receive $3,327 monthly. The difference is $654.

A Veteran, in addition to monthly compensation of $3,327, would also be entitled to receive all medical care from VA, to include inpatient and outpatient care, medications, and various therapy modalities. This Veteran would also have access to multiple home health care options through the VA medical center. Such care would likely relieve the Veteran of any health care costs unless such care was declined.

We believe that the law provides significant compensation and health care benefits to a Veteran who is determined to be in need of regular aid and attendance. However, those Veterans with profound cognitive impairment due to TBI are not currently eligible for the higher level of aid and attendance if they do not meet the requirements of 38 U.S.C. § 1114(r).

Question 2. I have also been working on a bill to eliminate the potential delay in receipt of VA disability compensation for veterans being medically discharged from service.

Question 2A. Under current law, if VA is ready to award benefits to a severely injured veteran upon discharge from service, how long will it take for VA disability checks to actually show up if the veteran, for whatever reason, is discharged at the beginning of a month?

Response. The effective date of an award of benefits is set by 38 U.S.C. § 5110. However, under 38 U.S.C. § 5111(a), VA may not pay compensation for any period before the first day of the calendar month following the month in which the award became effective. VA compensation is paid on the first of the month following the month for which VA may pay compensation under section 5111. For example, if a Veteran was discharged from service on January 31, 2009, and if the effective date of the Veteran's award of VA compensation is February 1, 2009, the first month for which VA could pay compensation under section 5111 is March 2009. The first VA payment of compensation to the Veteran would occur at the beginning of April 2009.

Question 2B. Are you aware of any justifications for why there should be a delay in receiving VA compensation?

Response. As explained above, 38 U.S.C. § 5111(a) (implemented at 38 CFR 3.31) provides that no payment may be made to any individual for any period before the first day of the calendar month following the month in which the award was effective. And, as noted, VA payments are made the first of each month for the preceding month. This applies for original awards of benefits or for increases in benefits.

Regarding the interval between when a claim is received and when it is decided, VA endeavors to render decisions in a timely fashion. The nature of individual claims, legal requirements governing the claims process, and success or lack thereof in obtaining necessary evidence can affect the time to decide a claim and initiate the payment of benefits.

Question 3. One of the bills I have been working on would allow servicemembers who have lost limbs and cannot use prosthetic devices, for any reason, to qualify for increased special monthly compensation. Under current law, it appears that these higher payments are only available if the inability to use a prosthetic appliance is caused by the site of the amputation or because of complications.

Question 3A. Can you explain VA's current policy on this?

Response. The level of SMC based on inability to use prosthetic appliances is limited by law to the criteria mandated in 38 U.S.C. § 1114(m). The statute provides SMC for Veterans who, as a result of a service-connected disability, have "suffered the anatomical loss or loss of use of both hands, or of both legs at a level, or with complications, preventing natural knee action with prostheses in place, or of one arm and one leg at levels, or with complications, preventing natural elbow and knee action with prostheses in place." Entitlement to an increased rate of compensation under 38 U.S.C. § 1114(n)–(r) would depend upon whether a Veteran's disability satisfies these additional statutory criteria.

Question 3B. Do you know of any justification for denying increased special monthly compensation if there is a good reason why the veteran is unable to use prosthetic appliances?

Response. The levels of SMC awarded to Veterans who are unable to use prosthetic appliances is set by section 1114(m). VA reviews all available medical evidence to determine the correct level of SMC based on current law and regulations.

Response to Post-Hearing Questions Submitted by Hon. Bernard Sanders to the Department of Veterans Affairs

Question 1. Mr. Mayes, in your prepared statement you said that the VA cannot support my legislation S. 820, the Veterans' Mobility Enhancement Act of 2009 that I have introduced to increase the automobile and special adaptive equipment grant program. Specifically you said, "[w]e understand the importance of providing sufficient resources for vehicles or adaptive equipment to servicemembers and veterans who rely on them, but we cannot support this bill at this time. In order to best support the goals of this program, we will need to review the appropriate amount to provide for this benefit." Can you explain to me what the VA views as an appropriate amount of benefit for disabled veterans using the automobile and special adaptive equipment grant program? How does VA determine what amount is appropriate?

Response. We agree that an increase is warranted in the automobile allowance such that the benefit adequately assists qualifying Veterans in obtaining a suitable vehicle. However, we have not completed our analysis to determine the appropriate increase in the automobile allowance and whether the amount should fully cover the average replacement cost of a new automobile or a portion of the average cost. We anticipate completion of that analysis in the near future and will share our recommendation with the Committee once it is complete.

Question 2. Mr. Mayes, in your prepared statement you mention that the VA did not have time to comment on S. 315, the Veterans Outreach Improvement Act of

2009, the legislation that I have introduced with Senator Feingold to require, among other components, VA to have a specific outreach account in their annual budget and to increase the support VA provides to state and local organizations and governments providing outreach to our veterans to let them know about available services.

Question 2A. Can you tell me what the Veterans Benefit Administration currently does to inform veterans about the services and benefits available to them?

Response. Veterans Benefit Administration (VBA) provides benefit information to servicemembers, Veterans and their beneficiaries through a variety of means. As more Veterans communicate through electronic mediums, VBA presents up-to-date information regarding new programs and initiatives on its Web site. VBA also uses traditional methods such as direct mailing and phone contacts for those Veterans who prefer not to communicate electronically. Some specific outreach initiatives are highlighted below.

Post-9/11 GI Bill outreach.

- Information about the new benefit is on the Education Service Web site (www.gibill.va.gov).
- In addition to the Education Service Web site, an informational page on the new benefit has also been posted on Facebook.
- Our Web site averages 40–50 million visits per month which is double our activity from the preceding year.
- 600,000 individuals have signed up to receive updates from this Web site.
- VA completed the mailing of 2 million informational letters to potentially eligible Veterans.
- VA worked with the Department of Defense (DOD) to provide information on leave and earning statements and DOD/service portal Web sites.
- VA also collaborates with the Department of Labor's Veterans' Employment and Training Service to assist Veterans find suitable employment.

Post-9/11 GI Bill outreach to colleges and universities.

- VBA recently mailed all colleges and universities to advise them of the major provisions of the Post-9/11 GI Bill, most specifically the Yellow Ribbon Program. The Yellow Ribbon Program allows a school to enter into an agreement to pay tuition and fee expenses not covered by the Post-9/11 GI Bill. VA has received 126 Yellow Ribbon Program agreements. All agreements were due by June 15, 2009.
- VBA also worked closely with national organizations representing colleges and universities to provide them information and training about the new GI Bill program.
- VBA continues to provide information at Veterans' service organizations (VSO) meetings, Department of Education student financial aid regional and national conferences, and Student Veterans of America meetings.

Pre-discharge Claims outreach.

- VBA expanded the pre-discharge claims processing program to allow servicemembers who are stationed at any military installation to participate in the benefits delivery at discharge (BDD) program.
- VBA added an additional program, called quick start, which allows servicemembers who are within 60 days of discharge to file claims for service-connected compensation prior to leaving service.
- VBA coordinated with DOD to post a BDD fact sheet and e-brochure on VA and DOD/Service Web sites.

Transition Assistance Program and Disabled Transition Assistance Outreach.

- VBA provides servicemembers and their families with transition assistance briefings and disabled training assistance briefings.
- In 2008, nearly 8,700 briefings were provided to more than 299,000 attendees and over 830 briefings were provided to over 15,260 servicemembers overseas.

Outreach to Veterans on employment.

- VBA's "VetSuccess.gov" Web site expanded in March 2009 to make it easier for Veterans to navigate, and employers to post jobs and find qualified Veterans to fill their vacancies.
- VA collaborates with National Association of State Workforce Agencies and direct employers to include a job central data bank of over 500,000 jobs.
- Also, three VetSuccess videos may be viewed via YouTube. These short, testimonial videos depict three Veterans who successfully completed their programs of rehabilitation and share their inspirational stories.

Specialized claims outreach.

• On November 4, 2008, around 28,000 outreach letters were sent to Veterans who may qualify for presumptive conditions associated with Agent Orange.

• On March 17, 2009, approximately 32,000 outreach letters were sent to Veterans with service-connected TBI encouraging them to request reexamination based on the new rating criteria.

• Amyotrophic lateral sclerosis, radiation, and former prisoner of war outreach letters are being sent to Veterans and survivors.

Specially Adapted Housing (SAH) Grant Outreach.

• In July 2008, Congress passed legislation related to SAH grant program authorizing temporary assistance residence grants to active-duty servicemembers, increasing grant amounts, and extending eligibility to Veterans/servicemembers with permanent and total service-connected disabilities as a result of severe burns.

• VBA released a press release, issued field employee guidance, educated the VSOs of this program change, and on August 2008 Loan Guarantee educated the military community at the Brooke Army Medical Center of this new burn legislation.

• VBA released a new SAH video in November 2008 called "Homes for Heroes" that outlines the expanded SAH program for severely injured active duty servicemembers and Veterans.

Traumatic Servicemembers' Group Life Insurance Outreach.

• VBA collaborates with DOD and the military services to develop special outreach procedures to implement new qualifying injuries/losses within TSGLI.

• Based on guidance by VBA, each military service's TSGLI office automatically reconsiders all previously denied claims and all claims in which less than $100,000 has been paid.

• Additionally, VBA insurance center contacts Operation Enduring Freedom/Operation Iraqi Freedom (OEF/OIF) separating servicemembers who had SGLI coverage and have been rated by their respective branch of service or by VA as 50–100 percent disabled. VBA insurance personally contacts by phone this group to inform them of SGLI extension, VGLI, TSGLI, and SDVI which averages between 100–200 contacts monthly.

Question 2B. Do you know how much money the VBA spends on outreach activities and services each year? If so, please provide that number broken down into as many specific activities as possible.

Response. In fiscal 2008, VBA provided over 100,000 hours in support of our on-going outreach mission. Currently, VBA does not have a separate budget for outreach as this is part of our on-going mission to inform servicemembers, Veterans, survivors, dependents and stakeholders of benefits and services offered through the VBA.

Question 2C. Does the VBA use contracts with outside entities to provide outreach services? If so, what kind of organizations do you contract with?

Response. VBA contracts with State Approving Agencies (SAA) primarily for approval of education and training courses in each state. In conjunction with their duties, SAAs provide outreach on education benefits available under Federal and State laws. VBA does not contract with other outside entities to provide outreach services.

Attachment A

TSGLI Schedule of Losses

For losses listed in Part I, multiple injuries resulting from a single traumatic event may be combined with each other and treated as one loss for purposes of a single payment (except where noted otherwise), however, the total payment amount MAY NOT exceed $100,000.

Part I	
Loss	**Payment Amount**
1. **Sight:** Total and permanent loss of sight **OR** loss of sight that has lasted 120 days ▪ For each eye	$50,000
2. Hearing: Total and permanent loss of hearing ▪ For one ear ▪ For both ears	 $25,000 $100,000
3. Speech: Total and permanent loss of speech	$50,000
4. Quadriplegia: Complete paralysis of all four limbs	$100,000
5. Hemiplegia: Complete paralysis of the upper and lower limbs on one side of the body	$100,000
6. Paraplegia: Complete paralysis of both lower limbs	$100,000
7. Uniplegia: Complete paralysis of one limb* **Note: Payment for uniplegia of arm cannot be combined with loss 9, 10 or 14 for the same arm. Payment for uniplegia of leg cannot be combined with loss 11, 12, 13 or 15 for the same leg.*	$50,000
8. Burns: 2nd degree or worse burns to at least 20 percent of the body including the face **OR**, at least 20 percent of the face	$100,000
9. Amputation of hand: Amputation at or above the wrist ▪ For each hand* **Note: Payment for loss 9 cannot be combined with payment for loss 10 for the same hand.*	$50,000
10. Amputation of 4 fingers on 1 hand OR thumb alone: Amputation at or above the metacarpophalangeal joint ▪ For each hand	$50,000
11 . Amputation of foot: Amputation at or above the ankle ▪ For each foot* **Note: Payment for loss 11 cannot be combined with payments for losses 12 or 13 for the same foot.*	$50,000
12. Amputation of all toes including the big toe on 1 foot: Amputation at or above the metatarsophalangeal joint ▪ For each foot **Note: Payment for loss 12 cannot be combined with payments for loss 13 for the same foot.*	$50,000

Attachment A

13. Amputation of big toe only, OR other 4 toes on 1 foot: Amputation at or above the metatarsophalangeal joint ▪ For each foot	$25,000
14. Limb salvage of arm: Salvage of arm in place of amputation ▪ For each arm* **Note: Payment for loss 14 cannot be combined with payments for losses 9 or 10 for the same arm.*	$50,000
15 . Limb salvage of leg: Salvage of leg in place of amputation ▪ For each leg* **Note: Payment for loss 15 cannot be combined with payments for losses 11, 12 or 13 for the same leg.*	$50,000
16. Facial Reconstruction – reconstructive surgery to correct traumatic avulsions of the face or jaw that cause discontinuity defects.	
▪ **Jaw –** surgery to correct discontinuity loss of the upper or lower jaw	$75,000
▪ **Nose –** surgery to correct discontinuity loss of 50 percent or more of the cartilaginous nose	$50,000
▪ **Lips –** surgery to correct discontinuity loss of 50 percent or more of the upper or lower lip - For one lip - For both lips	$50,000 $75,000
▪ **Eyes –** surgery to correct discontinuity loss of 30 percent or more of the periorbita - For each eye	$25,000
▪ **Facial Tissue** – surgery to correct discontinuity loss of the tissue in 50 percent or more of any of the following facial subunits: forehead, temple, zygomatic, mandibular, infraorbital or chin. - For each facial subunit *Note 1: Injuries listed under facial reconstruction may be combined with each other, but the maximum benefit for facial reconstruction may not exceed $75,000.* *Note 2: Any injury or combination of injuries under facial reconstruction may also be combined with other injuries listed in Part I and treated as one loss, provided that all injuries are the result of a single traumatic event. However, the total payment amount may not exceed $100,000.*	$25,000
17. Coma from traumatic injury AND/OR Traumatic Brain Injury resulting in inability to perform at least 2 Activities of Daily Living (ADL)	
▪ at 15th consecutive day of coma or ADL loss	$25,000
▪ at 30th consecutive day of coma or ADL loss	an additional $25,000
▪ at 60th consecutive day of coma or ADL loss	an additional $25,000
▪ at 90th consecutive day of coma or ADL loss	an additional $25,000

Attachment A

18. Hospitalization due to traumatic brain injury ▪ at 15th consecutive day of hospitalization *Note 1: Payment for hospitalization replaces the first payment period in loss 17.* *Note 2: Duration of hospitalization includes dates on which member is transported from the injury site to a facility described in § 9.20(e)(6)(xiii), admitted to the facility, transferred between facilities, and discharged from the facility.*	$25,000

For losses listed in Part II, payment amounts MAY NOT be combined with payment amounts in Part I - only the higher amount will be paid. The total payment amount MAY NOT exceed $100,000 for multiple injuries resulting from a single traumatic event.

Part II	
Loss	**Payment Amount**
19. Traumatic injury resulting in inability to perform at least 2 Activities of Daily Living (ADL)	
▪ at 30th consecutive day of ADL loss	$25,000
▪ at 60th consecutive day of ADL loss	an additional $25,000
▪ at 90th consecutive day of ADL loss	an additional $25,000
▪ at 120th consecutive day of ADL loss	an additional $25,000
20. Hospitalization due to traumatic injury ▪ at 15th consecutive day of hospitalization *Note 1: Payment for hospitalization replaces the first payment period in loss 19.* *Note 2: Duration of hospitalization includes dates on which member is transported from the injury site to a facility described in § 9.20(e)(6)(xiii), admitted to the facility, transferred between facilities, and discharged from the facility.*	$25,000

Attachment B

Breakdown of Approved TSGLI Losses and Payments as of April 30, 2009

All Approvals by Injury	Total Number Approved	Total Amount Allowed
ADL Loss due to Other Traumatic Injury	3248	$173,300,000
15-Day Hospitalization	531	$13,450,000
ADL Loss due to Traumatic Brain Injury (TBI)	525	$37,600,000
Loss of One Foot	388	$20,950,000
Loss of Sight in One Eye	324	$16,900,000
2nd Degree Burns at 20% of Body or Face	282	$28,000,000
Loss of Both Feet	163	$16,300,000
Paraplegia	143	$14,300,000
Loss of One Hand	99	$5,250,000
Quadriplegia	90	$9,000,000
Coma of 15 Days or More	57	$3,325,000
Loss of Hearing in One Ear	56	$1,700,000
Loss of Sight in Both Eyes	47	$4,700,000
Limb Salvage - Arm or Leg	51	$3,100,000
Hemiplegia	39	$3,900,000
Facial Reconstruction	34	$2,475,000
Loss of Sight in One Eye and ADL's due to TBI	29	$2,825,000
Loss of Hearing in Both Ears	25	$2,425,000
Loss of One Hand and One Foot	19	$1,900,000
Uniplegia	14	$700,000
Loss of Thumb and Index Finger of Same Hand	13	$800,000
Loss of Hearing in One Ear and ADL's due to TBI	12	$775,000
Loss of One Foot and ADL's due to TBI	11	$1,100,000
Loss of Sight in One Eye and Coma of 15 Days or More	8	$675,000
Loss of Both Hands	8	$800,000
Loss of All Toes on One Foot	7	$350,000
Loss of Speech	6	$300,000
Loss of One Foot and Sight in One Eye	6	$600,000
Loss of One Hand and Sight in One Eye	6	$600,000
Loss of Thumb or All Other Fingers on One Hand	6	$275,000
Loss of Sight in One Eye and Hearing in One Ear	5	$400,000
Loss of One Hand and ADL's due to TBI	3	$250,000
Loss of Big Toe or All Other Toes on One Foot	3	$100,000
Loss of One Foot and Coma of 15 Days or More	2	$150,000
Loss of One Hand and Hearing in One Ear	2	$150,000
Loss of Speech and ADL's due to TBI	2	$200,000
Loss of One Hand and Coma of 15 Days or More	1	$100,000
Loss of Hearing in One Ear and Coma of 15 Days or More	1	$50,000
Loss of Speech and Hearing in One Ear	1	$75,000
Loss of Thumb and Index Finger of the Same Hand and ADL's due to TBI	1	$100,000
Totals	6268	$369,950,000

*ADL= Activities of Daily Living

Chairman AKAKA. I would like to welcome the second panel. First, I welcome Robert Jackson, who is the Assistant Director of National Legislative Service for the Veterans of Foreign Wars. Next, we have Ray Kelley, who is the Legislative Director of AMVETS. I also welcome R. Chuck Mason, a Legislative Attorney from CRS, and Mr. Ian DePlanque, who is the Assistant Director for the Claims Service of Veterans Affairs and Rehabilitation Commission at the American Legion. And finally, Rebecca Poynter, who is the director of Military Spouse Business Organization, is also here with us today.

Mr. Jackson, we will please begin with your testimony.

STATEMENT OF ROBERT JACKSON, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. JACKSON. Thank you, Mr. Chairman, Ranking Member Burr, Members of the Committee.

Thank you for the opportunity to provide testimony on pending Veterans' Benefits Legislation. The 1.8 million men and women of the Veterans of Foreign Wars of the United States do appreciate the voice you give them at these important hearings.

Due to the number of bills on the agenda, I am going to focus on one bill, the Veterans' Rehabilitation and Training portion. And I request my written testimony be entered into the official record.

While the VFW supports the intent of Senate Bill 514, the Veterans' Rehabilitation and Training Improvement Act, we believe more can and should be done to address the core issues facing the Vocational Rehabilitation and Employment Service, or VR&E. Specifically, this legislation would require the amount of monthly subsistence allowance paid to a veteran participating in a VA rehabilitation program to be equal to the national average of the basic allowance of for housing paid to a member of the Armed Forces at Pay grade E–5. The legislation would also provide reimbursement for costs incurred during participation if a veteran successfully completes the program.

We believe that while this is a very important step, a disparity would still exist between Chapter 31 and Chapter 33 Subsistence Allowance Benefits. In utilizing a national average, many veterans may still choose not to use the Chapter 31 benefit because they may receive a higher stipend with Chapter 33. This would particularly be true in areas with a high cost of living. That is why the VFW would prefer to see Chapter 31's benefit paid at the same rate as a veteran receiving Chapter 33. Additionally, we support providing reimbursement for costs incurred by veterans as a result of participation, however, these costs need to be paid while a veteran is enrolled when assistance is most needed, not following their successful completion.

We also support the legislation's proposed repeal of the per-fiscal-year limit on the number of veterans who may participate in the VA Independent Living Services and Assistance program.

In past testimony, the VFW has cited several other changes that need to be made to ensure the VR&E program is the best transitional and rehabilitative program in VA's arsenal.

First, the VFW would like to see the delimiting date removed from VR&E. Currently, the delimiting date is set at 12 years after separation from the military, or 12 years following the date a servicemember learns of their rating for a service-connected disability. This fails to take into account the fact that many service-related injuries will not hinder the veteran to the point of needing help or rehabilitation until many years following the injury.

Eliminating the delimiting date would allow veterans to access the VR&E program on a needs basis for the entirety of their employable lives. Veterans would still have to be approved for VR&E as having an employment handicap resulting from their service-connected disability and would still be subject to total cap of services. However, dropping the arbitrary delimiting date would ensure rehabilitation for veterans should their service-connected disability progress over time.

Second, for many veterans with dependents, the VR&E educational tract provides insufficient support. Veterans with dependents are often those with the most pressing needs to secure mean-

ingful long-term employment. Many seriously disabled veterans are unable to pursue all of their career options or goals due to the limited resources provided to disabled veterans with spouses and children. Unfortunately, these heroes utilize VR&E's employment track at a rate higher than disabled veterans without dependents. The VFW believes this is likely because immediate employment, while possibly not the best long-term rehabilitation outlook for the veteran, provides higher financial stability in the short-term to the veteran and the family who otherwise may not be able to afford the costs associated with the veteran's long-term educational rehabilitation.

The VFW would like to see VR&E institute a program to help veterans with dependents while they receive training rehabilitation and education. This could be achieved by establishing a sufficient allowance to assist with the cost-of-living and in some cases by providing childcare vouchers or stipends as childcare is a substantial expense for many of these veterans.

And finally, the VR&E needs to reduce time from enrollment to start of services. Currently, it can take up to several months for a veteran to begin a program of training in VR&E. This occurs primarily because VR&E is required to validate that an entitlement is present. In a recent conversation with VR&E's central office, the VFW learned that it is extraordinarily rare that a veteran's entitlement is not found for the VR&E program. If a veteran has proven eligibility for VR&E, the VFW believes entitlement should be assumed, thereby minimizing veterans' time in gaining access to VR&E programs.

Mr. Chairman, thank you once again for inviting us to testify. This concludes my statement and I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Jackson follows:]

PREPARED STATEMENT OF ROBERT JACKSON, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. Chairman, Ranking Member Burr and Members of the Committee: Thank you for the opportunity to provide testimony on pending veterans' benefits legislation. The 1.8 million men and women of the Veterans of Foreign Wars of the U.S. appreciate the voice you give them at these important hearings.

S. 263, THE SERVICEMEMBERS ACCESS TO JUSTICE ACT

The VFW strongly supports this legislation. The Servicemembers Access to Justice Act (SAJA) would close several loopholes and strengthen the protections in current law to ensure that servicemembers' and veterans' employment and reemployment rights are effectively enforced under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). We thank Senator Casey and the original cosponsors of this legislation for its introduction, and we urge its passage.

We especially appreciate Section 2 of the legislation. It would waive states sovereign immunity under the 11th amendment, insuring servicemembers rights in regard to state law. Additionally, the bill would make pre-deployment arbitration dispute agreements unenforceable, require the award of attorney fees to servicemembers who prevail in actions to enforce USERRA, and define the parameters of successor in interest for companies that are bought and sold.

Meaningful reform of USERRA is long overdue. With more than one million veterans already on the unemployment rolls, the VFW is deeply concerned with the protection of the servicemember, and ensuring that the servicemember is reemployed by their previous employer in accordance with the law is of paramount importance. According to the Department of Defense's (DOD) Status of Forces study released in November 2007, among Post-9/11 returning National Guard and Reservists, nearly 11,000 were denied prompt reemployment and more than 20,000 lost

their seniority, pay, and other benefits. Moreover, 20,000 saw their pensions cut and more than 15,000 did not receive the training they needed to return to their former jobs.

This legislation would eliminate those problems by closing loopholes to ensure that returning reservists keep their jobs and employment benefits as required under current law. Specifically, the bill would make it easier for servicemembers to obtain justice when their employment rights are violated by prohibiting employers from requiring them to give up their ability to enforce their rights under USERRA in court in order to get a job or keep a job.

S. 315, THE VETERANS' OUTREACH IMPROVEMENT ACT

The VFW is pleased to offer our support for this legislation, which would increase congressional oversight of the VA's outreach activities and authorize the Secretary of Veterans Affairs to work with State, local and community-based organizations to perform outreach.

Specifically, this bill would improve outreach activities performed by the VA by creating separate funding line items for outreach activities within the budgets of the VA and its agencies, to ensure oversight of the VA's outreach activities. Additionally, the bill would create an intra-agency structure to coordinate outreach activities, allowing VA components to consolidate their efforts, share proven outreach mechanisms, and avoid duplication of effort. Finally, the bill would allow the VA to award grant funds to State, local and community-based organizations to conduct outreach activities.

We believe that the passage of this legislation would help to facilitate consistent implementation of VA's outreach responsibilities around the country. This can only serve to better the care VA provides to this Nation's veterans. For this reason, we support this bill.

S. 347

The VFW supports this legislation, which would allow the Secretary of Veterans Affairs to consider the loss of a dominant hand when determining severity of loss for purposes of traumatic injury protection under Servicemembers' Group Life Insurance.

Many occupational therapists, who provide treatment to amputees, maintain that a person who has lost a dominant hand must overcome greater physiological and psychological barriers than someone losing a non-dominant hand. This legislation would give VA the authority to distinguish the difference and to award greater compensation for the loss of a dominant hand.

S. 407, THE VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT

The VFW supports this legislation as it allows our disabled veterans and their dependents to keep pace with the rising costs of goods and services, which is especially difficult in these tough economic times.

Congress regularly enacts an annual cost-of-living adjustment for veterans' compensation in order to ensure that inflation does not erode its purchasing power. Without an annual COLA increase, these veterans and their families would see the value of their hard-earned benefits slowly diminish.

This bill would index the cost-of-living adjustment in the rates of disability compensation, dependents compensation, the clothing allowance and DIC rates. This adjustment would be parallel to the rate of increase for Social Security benefits.

We would note that we continue to oppose the rounding-down of compensation to the lowest dollar, which was instituted several years ago as a budget reduction measure. We feel that this unfairly penalizes those who have already given much to this country.

S. 475, THE MILITARY SPOUSES RESIDENCY RELIEF ACT

The VFW supports this legislation, which would give a military spouse who moves out of state because of military orders the same option to claim one state of domicile, regardless of where they move. If a spouse chooses to take advantage of this, the servicemember and the spouse must have the same state of residence. This bill makes the move from station to station easier, removing the need to update drivers' licenses, filing tax returns for multiple states, and changing vehicle and voter registrations with each move.

Currently, servicemembers have the ability to claim a state of residence and maintain that residency regardless of where military orders may send them. Unfortunately, military spouses are not granted this same benefit. Consequently, military

spouses cannot retain joint ownership of the family vehicle in most states and are much less likely to have their names on deeds and titles of family property because of the implications of moving to another state. Additionally, while servicemembers can vote while deployed overseas, this right is not always extended to spouses.

S. 514, THE VETERANS REHABILITATION AND TRAINING IMPROVEMENTS ACT

While the VFW supports S. 514, we believe it does not go far enough to address the core issues facing the Vocational Rehabilitation and Employment Service (VR&E). Specifically, this legislation would require the amount of subsistence allowance paid to a veteran for a month in which the veteran participates in a VA rehabilitation program to be equal to the national average of the basic allowance for housing paid to a member of the Armed Forces in pay grade E–5. The legislation would also provide reimbursement for costs incurred during participation if a servicemember successfully completes the program.

We believe this is an important step in the right direction, but a disparity would still exist between Chapter 31 and 33 living allowance benefits. In utilizing a national average, many veterans may still choose not to use Chapter 31 because they may receive a higher stipend with Chapter 33. This would particularly be true in areas with a high cost of living. That is why the VFW would prefer to see Chapter 31's educational stipend paid at the same rate as a veteran receiving Chapter 33. Additionally, there is merit in providing reimbursement for costs incurred by veterans as a result of participation; however, these costs need to be paid while a veteran is enrolled, not following their successful completion, because that is when assistance is most needed.

We also support the legislation's proposed repeal of the per-fiscal-year limit on veterans who may participate in the VA Independent Living Services and Assistance program.

In recent testimony, the VFW sited several other changes that need to be made to ensure the VR&E program is the best transitional and rehabilitative program in the VA's arsenal, as follows:

Removal of the delimiting date

The VFW would like to see the delimiting date removed for VR&E. Currently, the delimiting date is set at 12 years after separation from the military, or 12 years following the date a servicemember learns of their rating for a service-connected disability. This fails to take into account the fact that many service related injuries will not hinder the veteran to the point of needing help or rehabilitation until many years following the injury.

Eliminating VR&E's delimiting date would allow veterans to access the VR&E program on a needs basis for the entirety of their employable lives. Veterans would still have to be approved by VR&E as having an employment handicap resulting from their service-connected disability and would still be subject to the total cap of services. However, dropping the arbitrary delimiting date would insure rehabilitation for veterans should their service-connected disability progress over time.

For Many Disabled Veterans with Dependents VR&E Education Tracks are Insufficient

For many veterans with dependents the VR&E educational track provides insufficient support. Veterans with dependents are the second largest group seeking assistance from VR&E and they are often those with the most pressing needs to secure meaningful long-term employment. Many seriously disabled veterans are unable to pursue all of their career options or goals due to the limited resources provided to disabled veterans with children and spouses. We must not forget that these veterans are utilizing VR&E because of a disability they incurred in service to our country. Unfortunately, these heroes utilize VR&E's employment track at a rate higher than disabled veterans without dependents. The VFW believes this is likely because immediate employment, while possibly not the best long-term rehabilitation outlook, immediately provides higher resources to the family that cannot afford long-term educational rehabilitation.

The Veterans of Foreign Wars would like to see VR&E institute a program to help veterans with dependents while they receive training, rehabilitation and education. This could be achieved by establishing a sufficient allowance to assist with the cost-of-living and in some cases by providing childcare vouchers or stipends. Childcare is a substantial expense for many of these veterans. Without aid of some form, many disabled veterans will be unable to afford the costs associated with long-term educational rehabilitation.

By assisting these veterans with these expenses, we can increase the likelihood they will enjoy long-term success and an increased quality of life. This will lead to decreased usage of VA services and is a worthwhile proactive approach.

VR&E Performance Metrics Need to be Revised to Emphasize Long-term Success

Currently VR&E measures the "rehabilitation rate" as the number of veterans with disabilities that achieve their VR&E goals and are declared rehabilitated compared to the number that discontinue or leave the program before achieving these goals. "Rehabilitated" within the employment track means that a veteran has been gainfully employed for a period of 60 days following any VR&E services they received. This form of performance measure could have the latent consequence of incentivizing short-term employment solutions over long-term strategies.

The VFW would like to see all VR&E performance metrics changed to reflect the employable future of the veteran. A veteran's success in completing a rehabilitation program followed by his employment does not necessarily mean he has been rehabilitated for the course of his employable future. Changing the metrics to reflect a career-long standing will incentivize long-term approaches to VR&E programs. If an injury is aggravated following rehabilitation then a servicemember may need additional rehabilitation to ensure employability.

VR&E Needs to Reduce Time from Enrollment to Start of Services

The current VR&E program can take up to several months to begin a program of training. This occurs primarily because VR&E is required to validate that entitlement is present. In a recent conversation with VR&E's central office, the VFW learned that it is extraordinarily rare that entitlement is not found for the VR&E program. If a veteran has proven eligibility for VR&E, the VFW believes entitlement ought to be assumed thereby minimizing veterans time in gaining access to VR&E programs.

S. 663, THE BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT

This bill would amend title 46, United States Code to provide benefits to certain individuals who served in the United States Merchant Marines during WWII.

The VFW recognizes the heroic service of Merchant Mariners during WWII. Their sacrifices and heroic efforts were instrumental in winning the Second World War. However, we cannot support this legislation to pay a monthly benefit of $1000 to these merchant mariners or to their surviving spouses, which would be in addition to any current veterans' benefit that would be otherwise payable. We believe that this payment would be disproportionate, in terms of recognition and benefits, to those received by veterans who have been placed in harm's way.

S. 691/S. 746

The VFW's departments of Colorado and Nebraska have worked diligently with the VA to establish national cemeteries in eastern Nebraska and southern Colorado and we encourage this Committee to approve a national cemetery in each region. Both requests fulfill the requirement by the VA under the Veterans Millennium Health Care and Benefits Act (Pub. L. 106–117) of a population threshold of 170,000 people living within a 75-mile radius of a state cemetery.

S. 728, THE VETERANS' INSURANCE AND BENEFITS ENHANCEMENT ACT

This comprehensive legislation, which the VFW is pleased to support, addresses a broad range of veterans' benefits and improves services for veterans both young and old. The bill includes several important provisions that would make enhancements to—veterans' benefits—in the following areas:

A new insurance program for veterans with service-connected disabilities: This new program would provide up to a maximum of $50,000 in level premium term life insurance coverage with the premium rates based on an updated mortality table. Consequently, premiums under this program would be fairer to veterans.

Expanded eligibility for retroactive benefits from traumatic injury protection coverage under Servicemembers' Group Life Insurance: Currently, all insured servicemembers under SGLI from December 1, 2005 to the present are covered by traumatic injury protection regardless of where their injuries occurred. Unfortunately, servicemembers who sustained traumatic injuries between October 7, 2001, and November 30, 2005, that were not incurred as a direct result of OEF/OIF service are not eligible for a retroactive payment. This legislation would expand eligibility to these servicemembers.

A $10,000 increase to the amount of supplemental insurance totally disabled veterans may purchase under the Service-Disabled Veterans Insurance Program: Many veterans who are totally disabled have difficulty obtaining commercial life insurance. This legislation would increase the amount of supplemental life insurance available from $20,000 to $30,000, providing these veterans with a more reasonable amount of life insurance coverage.

An increase in the amount of Veterans' Mortgage Life Insurance that a service-connected disabled veteran may purchase: The current economic climate necessitates the need for this provision, which would increase the maximum amount of Veterans' Mortgage Life Insurance that a service-connected disabled veteran may purchase from the current maximum of $90,000 up to $200,000. In the event of a veteran's death, the veteran's family is protected because VA will pay the balance of the mortgage owed up to the maximum amount of insurance purchased.

Other provisions within the bill would provide an upgrade of certain benefits for veterans and their survivors, including the extension of eligibility for automobiles and adaptive equipment for servicemembers and veterans with severe burn injuries; increasing the benefit rate for parents whose children die either during military service or as a result of a service-connected disability; and securing indexed cost-of-living increases for certain additional benefits for veterans and their families.

S. 820

The VFW supports this legislation because it will improve the lives of our most seriously disabled service-connected veterans.

This legislation reflects the VFW's recommendations published in the FY 2010 *Independent Budget*, regarding the enhancement of the automobile assistance allowance for disabled veterans.

More than 50 years ago, Congress set the amount of the automobile allowance to cover the full cost of an automobile. However, over time the value of that allowance has been significantly eroded because adjustments have been irregular and not reflective of the increased cost. This legislation restores equity between the cost of an automobile and the allowance by basing the allowance to 80 percent of the average retail cost of new automobiles for the preceding calendar year. Under this legislation, the automobile allowance would increase from $11,000, which represents 39 percent of the average cost of a new automobile, to $22,800, which represents the average cost of an automobile in model year 2008.

S. 842

This legislation provides needed foreclosure protection for our military families, and the VFW is proud to support it.

In the midst of the worst increase in mortgage defaults in close to 70 years, the foreclosure activity rate has gotten higher for the military compared to the rest of the Nation. Servicemembers and their families are constantly on the move from one duty station to the next and are finding it increasingly difficult to sell their homes in a housing market that is anything but stable.

In short, our military families are in desperate need of relief.

Last year, Congress passed legislation amending the Servicemembers Civil Relief Act, protecting servicemembers from losing homes for nonpayment of mortgages only while on active duty and for nine months after they return home. The sunset provision for that protection expires at the end of 2010.

S. 842 would repeal the sunset provision and allow the VA to pay mortgage holders unpaid balances on housing loans guaranteed by the VA. Additionally, the legislation allows for long-term refinancing of mortgages.

These soldiers and sailors fought for our country, they should not have to fight to save their homes.

S. 847

The VFW is pleased to support this legislation, which would eliminate the unfair restriction on separately earned benefits for Dependents' Educational Assistance (DEA) beneficiaries who also qualify for and accrue benefits under other VA and DOD educational benefit programs as a result of their own military service.

The DEA program provides education and training opportunities to eligible dependents of veterans who have permanent and total service-connected disabilities or who have died of these disabilities. The program offers up to 45 months of education benefits, which may be used for degree and certificate programs, apprenticeship, and on-the-job training. Currently the VA provides for a $915 per month entitlement for full time institutional training and a $737 per month entitlement for full-time farm cooperative training.

Specifically, this bill will allow servicemembers to utilize both the full 45-month DEA entitlement earned through a family member's service, as well as the full G.I. Bill entitlement they earn themselves, and will ensure that these individuals receive the compensation they deserve as children or spouses of those who have serious service-connected disabilities or who died while honorably serving their country.

The VFW agrees with Sen. Webb's assertion that ". . . the compensation the VA provides for spouses and dependents should not be counted against any educational benefits that a survivor has earned through his or her own service to our country."

DRAFT LEGISLATION: CLARIFICATION OF CHARACTERISTICS OF COMBAT SERVICE ACT

The VFW is supportive of this draft legislation, which would provide that evidence in a veteran's record of assignment in a combat zone shall be sufficient for a veteran to prove his or her combat service, when other military documents are unavailable.

Currently, veterans who can establish that they served in combat do not have to produce official military records to support their claim for disabilities related to that service. But some veterans, disabled by their service in Iraq and Afghanistan, are unable to benefit from this evidentiary requirement because they have difficulty proving personal participation in combat by official military documents. This draft legislation would remove those documentation barriers and allow the veteran to proceed through the process of determining the extent of his or her service-connected disability for claim purposes.

This concludes my statement. I would be happy to answer any questions you may have.

ADDITIONAL VIEWS SUBMITTED AFTER THE HEARING FROM VETERANS OF FOREIGN WARS OF THE UNITED STATES

VETERANS OF FOREIGN WARS OF THE UNITED STATES

May 4, 2009

The Honorable Richard Burr
217 Senate Russell Office Building
U.S. Senate
Washington, D.C. 20510

Dear Senator Burr:

On behalf of the 2.2 million members of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I am pleased to offer our support for S. 475, the *Military Spouses Residency Relief Act*, which would give a military spouse who moves out of state because of military orders the same option to claim one state of domicile, regardless of where they move. This legislation would remove the need for military spouses to update drivers' licenses, filing tax returns for multiple states, and changing vehicle and voter registrations with each move.

As you know, members of the Armed Forces currently have the ability to claim a state of residence and maintain that residency regardless of where military orders may send them. Unfortunately, military spouses are not granted this same benefit. Consequently, military spouses cannot retain joint ownership of the family vehicle in most states and are much less likely to have their names on deeds and titles of family property because of the implications of moving to another state. Additionally, while service members can vote while deployed overseas, this right is not always extended to spouses.

Thank you for taking the lead on this initiative and for your continued support of our armed forces and military families. I look forward to working with you to ensure this legislation is enacted.

Sincerely,

DENNIS CULLINAN, Director
National Legislative Services

cc: Sen. Daniel Akaka, Chairman, Senate Veterans' Affairs Committee

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AREA CODE (202)-543-2239 ● FAX NUMBER (202)-543-6719

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA TO VETERANS OF FOREIGN WARS OF THE UNITED STATES

Responses were not received as of press time.

Chairman AKAKA. Thank you very much, Mr. Jackson. Now we will hear from Mr. Kelley.

STATEMENT OF RAYMOND C. KELLEY, NATIONAL LEGISLATIVE DIRECTOR, AMVETS

Mr. KELLEY. Chairman Akaka, Ranking Member Burr, Members of the Committee, thank you for inviting AMVETS to present our views regarding pending veterans' benefits legislation.

For the sake of time I will only comment on legislation or provisions within legislation in which AMVETS has concerns.

AMVETS supports the intent of S. 315, but we recommend the VA be required to provide a more detailed outline of their outreach plan. AMVETS believes that only providing budget justification materials when submitting their fiscal year budget request to Congress is not sufficient. A more detailed outreach plan must be provided to ensure appropriate funding levels.

AMVETS wholly supports the Veterans' Compensation Cost-of-Living Adjustment Act of 2009. However, AMVETS strongly opposes rounding down of disability compensation and DIC. Currently, there are approximately 27,000 veterans who do not have reasonable access to national or State cemeteries using Colorado Springs as a center of the 75-mile radius. This falls well below the current VA formula of 170,000 veterans within a 75-mile radius and the independent budget's recommendation to reduce veteran threshold to 110,000 veterans within the same 75-mile radius.

Of the 29 counties that are listed in S. 691, only 12 have all or some part of the county within the radius threshold. AMVETS realizes that Fort Logan will be closing no later than 2019, and a new cemetery will need to be built in its place. Replacing the cemetery in the southern portion of the State will reduce accessibility for the higher populated northern portion of the State.

AMVETS does not support S. 691, but recommends the NCA begin looking for a suitable cemetery location along the I–25 corridor south of Denver, but far enough north that veterans who live as far south as Pueblo and as far north as Fort Collins and Greeley could be served as well. For veterans who live in regions that will not be served by either the Fort Logan or a newly established cemetery, AMVETS suggests the State work with NCA State Grants Programs to satisfy the burial needs of veterans who live in Colorado.

There are three sections within S. 728 that AMVETS would like to discuss. AMVETS supports Section 201 of the legislation, however, rounding down to the nearest whole dollar should be eliminated. In Sections 301 and 302, AMVETS supports the supplemental benefits for veterans' funeral and burial expense and plot allowance. This provision meets the request of past independent budgets through supplemental appropriate funds. AMVETS requests the supplemental payments be made permanent and match the request of the 2010 independent budget.

S. 746 describes the Sarpy County region as an area that includes 82 counties in three States. But using NCA formula, only 27 of the counties will fall within the 75-mile radius. AMVETS agrees with the intent of the legislation because it falls within the *Independent Budget*'s recommendation of 110,000 veterans' population

threshold. However, including 55 counties that fall outside the threshold model will leave veterans in these areas unserved by the State or national cemetery. AMVETS suggests the States involve assess the need outside the threshold radius, and if needed apply for grants through the NCA's State Grants Program.

AMVETS supports the clarification of characteristics of the Combat Service Act of 2009. AMVETS also agrees that defining combat zones to ensure that all servicemembers who are in the theater of operation have a more lenient burden of proof for service connectivity is important. AMVETS believes there is a definition that is between the too strict engaged in combat with the enemy and a combat zone being defined by the Internal Revenue Code. Defining combat zone as a theater of operation as agreed on by the two Secretaries involved will include all servicemembers who should be granted a lesser burden of proof without jeopardizing the integrity of the provision.

Mr. Chairman, thank you again for providing AMVETS the opportunity to testify before the Committee today, and I'll be happy to answer any questions you may have.

[The prepared statement of Mr. Kelley follows:]

PREPARED STATEMENT OF RAYMOND C. KELLEY,
NATIONAL LEGISLATIVE DIRECTOR, AMVETS

Chairman Akaka, Ranking Member Burr, Members of the Committee, Thank you for inviting AMVETS to present our views regarding bending veterans benefits legislation.

S. 263

AMVETS supports S. 263, the "Servicemembers Access to Justice Act of 2009." This bill will provide meaningful protection from employment discrimination because of military service by strengthening the Uniformed Service Employment and Reemployment Rights Act (USERRA). S. 263 will hold employers more responsible by:

1. invoking waiver of the 11th Amendment in cases concerning USERRA violations.
2. amending Chapter 1 of title 9 U.S.C. to clarify that USERRA disputes are exempt from mandatory arbitration.
3. making it mandatory for courts to act on behalf the servicemember in cases of discriminatory firing by amending section 4323(d).
4. expanding section 4323(d), title 38 U.S.C. to include Federal employers as well as state and local governments and private employers, as well as making the amount of damages payable as $10,000 or the actual amount of damages, which ever is greater.
5. requiring the award of attorney's fees in cases of employer USERRA violations.
6. protecting servicemembers in instances when the company he/she works for is purchased by an outside company by amending section 4303(4), title 38.
7. giving veterans the right to bring their case before state or US District Courts.

S. 315

S. 315 "Veterans Outreach Improvement Act of 2009" will authorize funds for VA to establish an enhanced outreach program as well as provide grants to state and local governments and nonprofit community-based organizations to enhance outreach and provide services that will assist veterans and dependents of veterans in realizing eligibility and assisting in applying for and receiving benefits. AMVETS supports the intent of S. 315, but we recommend that VA be required to provide a more detailed outline of their outreach plan. AMVETS believes that only submitting their budget justification materials when submitting their fiscal year budget request to Congress is not a specific enough implementation plan.

S. 347

S. 347 will amend section 1980A(d) title 38, U.S.C. to distinguish between the severity of a qualifying loss of a dominate hand and a non-dominate hand. AMVETS supports this provision.

S. 407

AMVETS wholly supports the "Veterans' Compensation Cost-of-Living Adjustment Act of 2009." this provision provides the same cost-of-living increase as is payable under title II of the Social Security Act. In this matter, the legislation is consistent with the requests of the *Independent Budget* and will ensure that our service-connected disabled veterans and their families will receive timely increases to their compensation. However, AMVETS strongly opposes "rounding down" of disability compensation and DIC. This cost-savings practice comes at the expense of our veterans and their dependants and survivors. Rounding down cost-of-living increases is a tax on one of the most sacred benefits provided by our government. Continuing this 31 year-old practice robs monies from our most deserving to reconcile the budget or provide funding for other purposes.

S. 475

AMVETS supports S. 475, the "Military Spouses Residency Relief Act." This Act will afford the same "home-of-record" status as the servicemember. Allowing spouses the ability to retain residency in a state regardless of where they are physically living while accompanying a military spouse who is on official military orders. Because of this legislation, military spouses will retain voting rights as well as maintain tax status in their home-of-record state.

S. 514

AMVETS believes that one of the underlying reasons disabled veterans do not complete Vocational Rehabilitation and Education (VR&E) Training is that the living stipend is not sufficient in assisting sustain a family while the veteran is in training. A full-time institutional program will grant $613 per month for a family of four. Under this bill the same veteran would be provided more than $1200 per month. This legislation will certainly reduce the financial burden of a veteran who is participating in VR&E. AMVETS supports this legislation.

S. 691

Currently, there are approximately 27,000 veterans who do not have reasonable access to a national or state cemetery using Colorado Springs as the center of the 75 mile radius. This falls well below the current VA formula of 170,000 veterans within a 75 mile radius and the *Independent Budgets* recommendation to reduce the veteran threshold to 110,000 veterans within a 75 mile radius. Of the 29 counties that are listed in S. 691 only 12 have all or some part of the county within the radius threshold. AMVETS realizes that Fort Logan will be closing no later than 2019 and a new cemetery will need to be built in its place, but placing the cemetery in the southern portion of the state will reduce accessibility for the higher populated northern portion of the state. AMVETS does not support this legislation but recommends that NCA begin looking for a suitable cemetery location along the I–25 corridor south of Denver, but far enough north that veterans who live as far south as Pueblo and as far north as Fort Collins and Greeley could be served as well. For veterans who live in regions that will not be served by either fort Logan or a newly established cemetery, AMVETS suggests that state work with NCA's State Grants Program to satisfy the burial needs of veterans who live in Colorado.

S. 663

AMVETS holds no position on this issue.

S. 728

Sec. 101—Ninety years after Service-Disabled Veterans' Insurance was made available the policy remains the same, $10,000. To make this policy meaningful again, AMVETS supports amending section 1922A title 38 U.S.C. to increase the SDVI to $50,000.

Sec. 102—AMVETS supports this provision

Sec. 103—AMVETS supports this provision

Sec. 104 exceeds the recommendations of the *Independent Budget* by increasing the Veterans' mortgage Life Insurance from $90,000 to $150,000 and then increases it again in 2012 to $200,000. AMVETS supports this provision.

Sec. 201—amending section 1311(f) of title 38 U.S.C. to reflect the cost-of-living increase that are provided in title II of the Social Security Act is consistent with the *IB*, and AMVETS supports this provision; however, rounding down to the nearest whole dollar is nothing more than a tax on an earned benefit and should be eliminated.

Sec. 202—AMVETS supports this provision

Sec. 203—AMVETS supports this provision.

Sec. 204—AMVETS supports this provision.

Sec. 301—AMVETS supports the supplemental benefits for veterans for funeral and burial expenses. This provision meets the requests of past *Independent Budgets* through supplemental appropriated funds. AMVETS requests these supplemental payments be made permanent and match the requests of the 2010 *IB* which requests increasing the service-connected burial benefit to $6,160 for those veterans who live outside the NCA threshold for national or state cemetery accessibility and increase the benefit to $2,793 for veterans who live inside the NCA threshold for cemetery accessibility. This provision also requests supplemental payments for non-service-connected burial benefits. Again, AMVETS believes these payments should be made permanent to reflect the recommendations of the 2010 *Independent Budget*. Under this recommendation, the amount payable to a veteran who lives outside the NCA threshold should be increased to $1,918 and veterans who live inside the threshold should receive $854 as a burial benefit.

Sec. 302—the supplemental plot allowance provided in this provision meets the expectations of past *Independent Budgets* and AMVETS supports the provision, but again AMVETS believes these payments should be made permanent and be increased to $1,150 to reflex the suggestions of the 2010 *IB*.

Sec. 401—AMVETS supports this provision

Sec. 402—AMVETS supports this provision

S. 746

Using the center of Sarpy County as the center point there are 110,000 veterans who currently do not have access to a national or state cemetery. Again, under current NCA formula this region does not qualify for a national cemetery. However, the finding of the 2008 "Evaluation of the VA Burial Benefits Program" and the recommendations of the *Independent Budget* suggest the population threshold should be reduced to 110,000 veterans within a 75 mile radius. S. 746 describes the Sarpy County Region as an area that includes 82 counties in three states, but using NCA formula, only 27 of the counties will the 75 mile radius. AMVETS agrees with the intent of the legislation because it falls within the *IB*'s recommendations of 110,000 veterans' population threshold. However, including 55 counties that fall outside the threshold model will leave veterans in these areas unserved by a state or national cemetery. AMVETS suggests the states involved assess the need outside the threshold radius and if needed apply for grants through the NCA's State Grants Program.

S. 820

S. 820, The "Veterans' Mobility Enhancement Act of 2009" increases the automobile assistance allowance for veterans. It matches the *Independent Budget*'s recommendations that this benefit should be 80% of the average retail cost of a new automobile. Currently, the allowance pays only 39% of the cost of a new vehicle. It is important that many of the veterans who qualify for this benefit will require an automobile that will meet their needs. These automobiles are often larger with specific adaptations that place the cost of these vehicles much higher than the average cost of today's automobiles. AMVETS supports this legislation.

AMVETS supports the "Clarification of Characteristics of Combat Service Act of 2009." Often times in a combat zone, access to permanent medical records or a medical facility is difficult at best. Ensuring a veteran will not be denied access to VA care because of the circumstances in which s/he served is important. AMVETS also agrees that defining combat zone to ensure that all servicemembers who are in a theater of operation have a more lenient burden of proof for service connectivity. AMVETS believes there is a definition that is between the too strict "engaged in combat with the enemy" and combat zone being defined by the Internal Revenue Code. The first definition often precludes servicemembers who service in a theater of operation but because of their Military Occupational Specialty are not traditionally seen as being engaged in combat with the enemy. Whereas the Internal Revenue Code based definition may be too broad of a term in many cases, but still ex-

clude servicemembers who are serving abroad in the larger, overall Global War on Terrorism. Somewhere between these two definitions is the answer. Defining combat zone as theater of operation as agreed upon by the two Secretaries involved will include all servicemembers who should be granted a lesser burden of proof without jeopardizing the integrity of this provision.

AMVETS supports this legislation. It will ensure that disabled veterans will not have to wait for the beginning of the month to receive disability payments. By enacting this bill, veterans will not only receive immediate compensation for their disability, they will not be financially penalized by a system that waits to make payment at the beginning of the month.

Mr. Chairman, thank you again for providing AMVETS the opportunity to testify before your Committee today. This concludes my testimony and I will be happy to answer any questions you might have.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA TO AMVETS

Responses were not received as of press time.

Chairman AKAKA. Thank you very much, Mr. Kelley.

Now we will hear from Mr. Mason.

STATEMENT OF R. CHUCK MASON, LEGISLATIVE ATTORNEY, CONGRESSIONAL RESEARCH SERVICE

Mr. MASON. Mr. Chairman, Ranking Member Burr, and Distinguished Members of the Committee, I'd like to thank you for inviting me to testify today.

While the Congressional Research Service takes no position on pending legislation, you requested comment on Senate 475, the Military Spouses Residency Relief Act. If enacted, the bill would amend three sections of the Servicemembers' Civil Relief Act that could arguably reduce confusion related to residency and taxation issues that often arise as a result of frequent duty station transfers for military families.

Congress has long recognized the need for protective legislation for servicemembers whose service to the national compromises their ability to meet obligations and protect their legal interests. During the Civil War, Congress enacted an absolute moratorium on civil actions brought against soldiers and sailors. During World War I, Congress passed the Soldiers' and Sailors' Civil Relief Act of 1918, which did not create a moratorium on legal actions but instead directed trial courts to apply principles of equity to determine the appropriate action to take whenever a servicemember's rights were involved in a controversy. During World War II, Congress essentially reenacted the expired 1918 statute as the Soldiers' and Sailors' Civil Relief Act of 1940, and then amended it substantially in 1942. One of the 1942 amendments was the creation of the prohibition on multiple State taxation of the property and income of a servicemember. In 2003, Congress enacted the Servicemembers' Civil Relief Act as a modernization and restatement of the Soldiers' and Sailors' Civil Relief Act and its protections.

In 1953, the United States Supreme Court in *Dameron* v. *Brodhead* held that the act to be constitutional under Congress' power to raise and support armies and to declare war. The *Dameron* case involved a challenge to the 1942 amendment regarding multiple State taxation. In upholding the statute, the Court stated that the purpose of the act is to provide for, strength, and

expedite the national defense by protecting servicemembers, enabling them to devote their energy to the defense needs of the Nation. If enacted, S. 475 would extend rights under three sections of the Act to include the servicemember's spouse.

Currently, under S. 508, a servicemember receives an exemption from residency and minimum age requirements related to various land rights, including the right to access and use public lands and to maintain mining claims, mineral permits, and leases. A spouse of a servicemember does not receive the same rights. However, under the proposed bill, spouses would receive the residency requirement exception enjoyed by the servicemember.

Section 511 of the Act prevents multiple State taxation on the property and income of military personnel serving within a tax jurisdiction by reason of military service. The Act provides that servicemembers neither lose or acquire a State of domicile or residence for taxation purposes when they serve at a duty station outside their home State in compliance with military orders. However, a servicemember who conducts other nonservice-related business may be taxed by the duty station jurisdiction for the resulting income. And while this section does not protect the income of a spouse or other military dependent from taxation in the duty station jurisdiction, the jurisdiction cannot include the military compensation earned by the nonresident servicemembers to compute the tax liability imposed on the nonmilitary income earned by the servicemember or his or her spouse.

Under the proposed bill, a new subsection addressing the income of military spouses would be created. The spouse of a servicemember would neither lose nor acquire a State of domicile or residence for taxation purposes when he or she accompanies a spouse to a duty station outside the home State in compliance with military orders. Any income earned by the spouse while in that jurisdiction pursuant to the orders would not be subject to the tax jurisdiction outside of their home State.

Finally, under Section 705 of the Act, military personnel are not deemed to have changed their State residence or domicile for the purpose of voting for any Federal, State, or local office solely because of their absence from their respective State in compliance with military orders. Under the proposed bill, the spouse of a servicemember would receive the same protection afforded the servicemember. It would not change his or her State residence or domicile for the purpose of voting solely because of the absence in accompanying their spouse on their orders.

In reviewing the proposed legislation, several issues may arise:

First, the language addressing residence for tax purposes of spouses of servicemembers may create a disparity in treatment between the servicemember and his or her spouse. As proposed, any income earned by a spouse while accompanying a servicemember would not be subject to taxation in the jurisdiction of military service. However, a servicemember would earn additional income be it through a business endeavor or part-time job. The servicemember's additional income would still be subject to taxation in the duty station jurisdiction.

Also, the constitutionality of the proposed language also appears to raise a question of first impression. While it is well settled that

the SCRA is constitutional under Congress' authority to raise and support the armies and to declare war, it is unclear if that power also encompasses the ability to exempt any individual not actually in the Armed Forces from taxation in the jurisdiction where his or her spouse is stationed. Any inquiry on the constitutionality question would likely hinge on whether exempting the spouse from taxation serves to assist the servicemember to devote their entire energy to the defense needs of the Nation.

Mr. Chairman, that concludes my prepared statement. I would be happy to answer any questions you or other Members of the Committee may have.

[The prepared statement of Mr. Mason follows:]

PREPARED STATEMENT OF R. CHUCK MASON, LEGISLATIVE ATTORNEY, AMERICAN LAW DIVISION, CONGRESSIONAL RESEARCH SERVICE

S. 475 MILITARY SPOUSES RESIDENCE RELIEF ACT

Chairman Akaka, Ranking Member Burr, and Distinguished Members of the Committee, my name is Chuck Mason. I am a legislative attorney for the American Law Division of the Congressional Research Service. I would like to thank you for inviting me to testify today regarding S. 475, the "Military Spouses Residency Relief Act."

INTRODUCTION

The Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) provided civil protections and rights to individuals based on their service in the U.S. Armed Forces. On December 19, 2003, Congress enacted Public Law 108–189, the Servicemembers Civil Relief Act (SCRA), in response to the increased utilization of Reserve and National Guard military units in the Bush Administration's "Global War on Terrorism," and as a modernization and restatement of the protections and rights previously available to servicemembers under the SSCRA.[1] Much like with the SSCRA, the SCRA has been amended since its initial passage and proposed changes continue to be introduced in Congress.

Congress has long recognized the need for protective legislation for servicemembers whose service to the Nation compromises their ability to meet obligations and protect their legal interests. During the Civil War, Congress enacted an absolute moratorium on civil actions brought against soldiers and sailors.[2] During World War I, Congress passed the Soldiers' and Sailors' Civil Relief Act of 1918,[3] which did not create a moratorium on legal actions against servicemembers, but instead directed trial courts to apply principles of equity to determine the appropriate action to take whenever a servicemember's rights were involved in a controversy. During World War II, Congress essentially reenacted the expired 1918 statute as the Soldiers' and Sailors' Civil Relief Act of 1940, and then amended it substantially in 1942 to take into account the new economic and legal landscape that had developed between the wars. During consideration of the amendments in the 87th Congress, Congressman Overton Brooks (D-LA) stated,

> This bill springs from the desire of the people of the United States to make sure as far as possible that men in service are not placed at a civil disadvantage during their absence. It springs from the inability of men who are in service to properly manage their normal business affairs while away. It likewise arises from the differences in pay which a soldier received and what the same man normally earns in civil life.[4]

Congress enacted amendments on several occasions during subsequent conflicts, including 2002 when the benefits of the SSCRA were extended to certain members

[1] See H. Rept. 108–81, at 32 (April 30, 2003). See also, S. Rept. 108–197, at 9 (November 17, 2003) (stating that the military had activated approximately 300,000 Reserves since September 2001, and that a DOD survey indicated that the self-employed Reservists reported an average $6,500 in lost income when mobilized or deployed).

[2] Act of June 11, 1864, ch. 118, 13 Stat. 123.

[3] 40 Stat. 440 (1918).

[4] H. Rept. 108–81, at 33 (April 30, 2003) (quoting statement by Congressman Overton Brooks (D-LA) on the floor of the House during consideration of amendments in 1942 to the SSCRA. 87 Cong. Rec. H. 5553 (June 11, 1942)).

of the National Guard.[5] In 2003, Congress enacted the SCRA as a modernization and restatement of the SSCRA and its protections.

The SCRA[6] is an exercise of Congress's power to raise and support armies (U.S. Const. Art. I, sec. 8, cl. 12) and to declare war (Art. I, sec. 8, cl. 11).[7] The purpose of the Act is to provide for, strengthen, and expedite the national defense by protecting servicemembers, enabling them to "devote their entire energy to the defense needs of the Nation."[8] The SCRA protects servicemembers by temporarily suspending certain judicial and administrative proceedings and transactions that may adversely affect their legal rights during military service. Forgiving of all debts or the extinguishment of contractual obligations on behalf of servicemembers who have been called up for active duty is not required, nor is absolute immunity from civil lawsuits provided. Instead, it provides for the suspension of claims and protection from default judgments. In this way, it seeks to balance the interests of servicemembers and their creditors, spreading the burden of national military service to a broader portion of the citizenry. In *Engstrom* v. *National Bank of Eagle Lake*, the United States Court of Appeals for the Fifth Circuit acknowledged the balancing required when it stated "[a]lthough the act is to be liberally construed it is not to be used as a sword against persons with legitimate claims."[9]

While the Congressional Research Service takes no position on pending legislation, you requested comment on S. 475, the "Military Spouses Residency Relief Act." If enacted, S. 475 would amend three sections of the Servicemembers Civil Relief Act: (1) Section 508, Land rights of servicemembers; (2) Section 511, Residence for tax purposes; and (3) Section 705, Guarantee of residency for military personnel. Arguably, the proposed amendments could reduce confusion related to residency and taxation issues, that often arise as a result of frequent duty station transfers, for military families.

Land rights of servicemembers—Sec. 508 (50 U.S.C. app. §568).

Various land rights are protected by the Servicemembers Civil Relief Act, including rights in public lands, desert-lands, mining claims, and mineral permits and leases. Under these protections, servicemembers may maintain rights to access and use public lands and to enter desert-lands obtained before entering military service. The servicemember may also retain mining claims and mineral permits and leases even in the event of nonperformance of the requirements of the lease while on active duty. Generally, an individual must be at least 21 years old in order to exercise such land rights; however the Act creates an exception to the age requirement and allows all servicemembers, regardless of age, to exercise rights related to lands owned or controlled by the United States. Additionally, any residency requirements, related to the establishment of a residence within a limited time, for purposes of exercising the land rights, are suspended for six months after release from military service. As enacted, the Act does not provide the same protections and rights to a servicemember's spouse or dependents.

Under S. 475, the spouse of a servicemember would be entitled to the suspension of residency requirements, with respect to exercising land rights, for a period of six months after the servicemember is released from military service.

Residence for tax purposes—Sec. 511 (50 U.S.C. app. §571).

In order to prevent multiple state taxation on the property and income of military personnel serving within various tax jurisdictions[10] by reason of military service, the Act provides that servicemembers neither lose nor acquire a state of domicile or residence for taxation purposes when they serve at a duty station outside their home state in compliance with military orders. A servicemember who conducts other nonservice-related business while in military service may, however, be taxed by the

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[5] Public Law 107–330, 116 Stat. 2820 (December 6, 2002) (Extending benefits of SSCRA to members of the National Guard called up by their respective state Governors to support Federal efforts during national emergencies (including the war against terrorism)).

[6] One of the amendments affected by Public Law 108–189 is the change in the name of the Act from Soldiers' and Sailors' Civil Relief Act (SSCRA) to Servicemembers Civil Relief Act (SCRA). The name of the Act was changed to the more inclusive SCRA "because soldiers, sailors, marines and airmen are collectively referred to as "servicemembers" in other statutes" (H. Rept. 108–81, at 35 (April 30, 2003)).

[7] *Dameron* v. *Brodhead*, 345 U.S. 322 (1953).

[8] 50 U.S.C. app. §502.

[9] *Engstrom* v. *First Nat'l Bank*, 47 F.3d, 1459, 1462 (5th Cir. Tex. 1995).

[10] "Tax jurisdiction" is defined to include "a State or a political subdivision of a State," which would include the District of Columbia and any commonwealth, territory or possession of the United States (Sec. 101(6)). "Taxation" includes licenses, fees, or excises imposed on an automobile that is also subject to licensing, fees or excise in the servicemember's state of residence. "Personal property" includes intangible and tangible property including motor vehicles.

duty station jurisdiction for the resulting income. This section does not protect the income of a spouse or other military dependent from taxation in the duty station jurisdiction. However, a tax jurisdiction cannot include the military compensation earned by nonresident servicemembers to compute the tax liability imposed on the non-military income earned by the servicemember or spouse. Personal property of a servicemember will not be subject to taxation by a jurisdiction other than his or her domicile or residence while serving at a duty station outside of his or her home state. However, relief from personal property taxes does not depend on whether the property is taxed by the state of domicile. Property used for business is not exempt from taxation. An Indian servicemember whose legal residence or domicile is a Federal Indian reservation will only pay taxes under the laws of the Federal Indian reservation and not to the state where the reservation is located.

S. 475 would create a new subsection addressing the income of a military spouse. Under the proposed language, the spouse of a servicemember would neither lose nor acquire a state of domicile or residence for taxation purposes when he or she accompanies a spouse to a duty station outside the home state in compliance with military orders. Any income earned by the spouse, while in that jurisdiction pursuant to the military orders, would not be subject to the tax jurisdiction outside of their home state. Personal property of the spouse of a servicemember would also not be subject to taxation by a jurisdiction other that his or her domicile or residence while accompanying his/her spouse to a duty station outside of his or her home state.

Guarantee of residency for military personnel—Sec. 705 (50 U.S.C. app. § 595).

Military personnel are not deemed to have changed their state residence or domicile for the purpose of voting for any Federal, state, or local office, solely because of their absence from the respective state in compliance with military or naval orders.

S. 475 would guarantee that the spouse of a servicemember would not change his or her state residence or domicile for the purpose of voting for any Federal, state, or local office, solely because of an absence from the respective state while accompanying a spouse to a duty station in compliance with military orders.

ISSUES FOR CONSIDERATION

In reviewing the proposed legislation, several questions may arise:

1. The language addressing residence for tax purposes of spouses of servicemembers may create a disparity in treatment between the servicemember and his or her spouse. As proposed, any income earned by a spouse while accompanying a servicemember would not be subject to taxation in the jurisdiction of military service. However, if a servicemember were to earn additional income, be it through a business endeavor or a part-time job, the servicemember's additional income would be subject to taxation in that jurisdiction.

2. The constitutionality of the proposed language also appears to raise a question of first impression. It is well settled that the SCRA is constitutional under Congress' authority to raise and support the armies and to declare war. The U.S. Supreme Court in *Dameron* v. *Brodhead*,[11] a case addressing the ability of Congress to exempt servicemembers from taxation where stationed, stated that the purpose of the Act is to provide for, strengthen, and expedite the national defense by protecting servicemembers, enabling them to "devote their entire energy to the defense needs of the Nation." It is unclear if the power to raise and support the armies or to declare war also encompasses the ability to exempt an individual, not actually in the Armed Forces, from taxation in the jurisdiction where his or her spouse is stationed. Any inquiry on the constitutionality of the question would likely hinge on whether exempting the spouse from taxation outside of his or her home state assists the servicemember to "devote their entire energy to the defense needs of the Nation?"

Chairman AKAKA. Thank you very much, Mr. Mason, for your testimony.

Now we will hear from Mr. DePlanque.

[11] *Dameron* v. *Brodhead*, 345 U.S. 322 (1953).

STATEMENT OF IAN DePLANQUE, ASSISTANT DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. DEPLANQUE. Good morning, Mr. Chairman, Ranking Member Burr, and Members of the Committee.

On behalf of the American Legion, I would like to thank you for providing the opportunity to offer testimony regarding the broad variety of pending legislation here in the Senate.

You've already received our written testimony which details the specifics of the American Legion positions on the full list of legislation, and in the interest of brevity I'll offer additional comment on only a few points which require clarification.

To begin with, we recently received two pieces of draft legislation from Ranking Member Burr subsequent to the preparation of our written statement. While we would like additional time to further review in detail, initial review of them we are generally supportive, as they appear to be an expansion and an enhancement of the benefits offered to veterans, particularly amputee veterans and transitioning veterans who must choose between the Medical Board's decision and a VA compensation offer.

Regarding the prosthesis issue and something that was brought up earlier by Senator Burris, I would ask in terms of forming a vision, if everyone in the room was to be told you have a choice—you can keep one hand—I believe everyone would be able to make a determination relatively simply as to which hand they would prefer to keep. I would also ask the gentlemen present to consider if tomorrow morning you got up and were asked to shave with your non-dominant hand, you would recognize this might be more of an obstacle than your normal morning rituals of shaving with your dominant hand.

As Ranking Member Burr pointed out, we need to continue to examine the Rating Schedule. We need to continue to examine the compensation that we offer our veterans for the disabilities that they suffer. And we need to sometimes recognize that outside the earning potential the effects on the quality-of-life need to be considered for the veterans who suffer from these disabilities.

As we are also discussing our understanding of the changing times in addressing our disability compensation system, I would add that the current piece of legislation—the clarification of the characteristics of Combat Service Act of 2009 addresses the Section 1154 of Title 38, which refers to the confirmation of incidence in combat. In 1941, when Congress first brought this forward, they recognized that it was very difficult to keep records in combat and therefore, we have been more willing to accept the word of honor of a servicemember that as long as the actions were consistent with the hardships and conditions of combat—as long as the action described was consistent with that—we would accept the word that the incident occurred. Which consist of only one part of the three-part process involved in service connection of an injury.

We are recognizing that there is a changing face of the modern battlefield. Much has changed in the last 70 years. Many of the incidents that were intended to be recognized as experiences of combat are not as easily proved that combat took place. In Afghanistan, a soldier could witness a child crossing a mine field and deto-

nating a mine. As this did not happen to an American servicemember, this may not be documented. In Saigon, a soldier could witness a monk self-emulating on the street. This also may not be documented or as easily documented, but we all recognize that these are actions that are consistent with the daily occurrences in a combat zone.

All servicemembers need to be treated with the same hand. It is far easier under the current regulations for combat arms soldiers to prove the existence of combat, yet we all know that it is not just combat arms soldiers, and sailors, and airmen, and Marines, who were facing the existence of these activities of combat situations. It is all soldiers, and we believe that it is time that that be recognized in a combat zone.

I would like to thank you for offering us this opportunity, and I would be happy to answer any questions the Chairman or Members of the Committee have.

[The prepared statement of Mr. DePlanque follows:]

PREPARED STATEMENT OF IAN DEPLANQUE, ASSISTANT DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. Chairman and Members of the Committee: Thank you for this opportunity for The American Legion to present its views on the broad list of veterans' legislation being considered by this Committee.

S. 263, SERVICEMEMBERS ACCESS TO JUSTICE ACT OF 2009

The purpose of this bill is to waive a state's sovereign immunity with respect to the enforcement of uniformed services members' employment or reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

The American Legion is deeply concerned with the protection of recently separated military veterans' employment and reemployment rights and believes the Federal Government must demonstrate zero-tolerance of illegal and egregious hiring practices that ignore USERRA provisions. Furthermore, The American Legion supports the amendment and strengthening of USERRA to ensure that National Guard and Reservists receive the employment and reemployment rights afforded to them through their dedicated service to the country and as required under law.

The American Legion supports this bill which will strengthen veterans' employment and reemployment rights.

S. 315, VETERANS OUTREACH IMPROVEMENT ACT OF 2009

The purpose of this bill is to amend title 38, United States Code (U.S.C.), to improve the outreach activities of the Department of Veterans Affairs (VA), and for other purposes. The bill proposes to do so through the improvement of budgeting and funding of VA outreach activities across the board in multiple aspects not limited to health care, public affairs, the National Cemetery Administration and other aspects.

The American Legion believes that proper and thorough outreach is essential to ensuring this Nation's veterans and their dependents are fully informed and aware of all of the benefits to which they may be entitled to receive based on their honorable military service to our Nation.

S. 347

The purpose of this bill to amend title 38, U.S.C., to allow the Secretary of VA to distinguish between the severity of a qualifying loss of a dominant hand and a qualifying loss of a non-dominant hand for the purposes of traumatic injury protection under Servicemember Group Life Insurance, and for other purposes.

The American Legion has no stated position on this bill, and continues to monitor the disposition of the legislation. The American Legion cites their specific concerns that no piece of legislation be made to reduce or curtail a benefit or benefits provided to veterans.

It is important to distinguish that the enactment of any legislation should not diminish the compensation due to veterans for such catastrophic injuries as the loss

of a hand, dominant or non-dominant. The American Legion notes that this piece of legislation specifically appears to address the mechanisms of payment of benefits to eligible veterans before the period of enactment.

S. 407, VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2009

The purpose of this bill is to increase, effective as of December 1, 2009, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans. The amount of increase shall be the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401, et seq.) are increased effective December 1, 2009.

The American Legion supports this annual cost-of-living adjustment in compensation benefits, including dependency and indemnity compensation (DIC) recipients. It is imperative that Congress annually considers the economic needs of disabled veterans and their survivors and provide an appropriate cost-of-living adjustment to their benefits, especially should the adjustment need to be higher than that provided to other Federal beneficiaries, such as recipients of Social Security.

S. 475, MILITARY SPOUSES RESIDENCY RELIEF ACT

The purpose of this bill is to amend the Servicemembers Civil Relief Act to guarantee the equity of spouses of military personnel with regard to matters of residency, and for other purposes. The legislation seeks to prevent any loss of beneficial status of residency for purposes such as taxes, voting and other matters, to spouses of servicemembers who are required to relocate related to the service requirements of the servicemember.

The American Legion recognizes the needs of family members of veterans in addition to the needs of those who serve. Much in the same manner as our previous support of measures which extended existing veterans' benefits to the family members, such as in the field of education, The American Legion is supportive of this type of legislation.

S. 514, VETERANS REHABILITATION AND TRAINING IMPROVEMENTS ACT OF 2009

The purpose of this bill is to amend title 38, U.S.C., to enhance vocational rehabilitation benefits for veterans, and for other purposes.

The bill, in effect, normalizes subsistence payments to be in line with a national average of the housing allowance available to an E–5 enlisted servicemember. It further allows for reimbursements for veterans who complete rehabilitation programs consistent with existing voc-rehab provisions, as well as repeals limitations on the numbers of veterans involved in independent living and assistance programs.

This constitutes upgrades in several areas of benefits offered to veterans through the vocational rehabilitation and training programs. The American Legion fully supports this bill.

S. 691

The purpose of this bill is to direct the VA Secretary of to establish a National Cemetery for veterans in the Southern Colorado region, and for other purposes.

The American Legion supports the establishment of additional national and state veterans' cemeteries and columbaria wherever a need for them is apparent and petitions Congress to provide required operations and construction funding to ensure VA burial in a national or state veterans cemetery is a realistic option for veterans and their eligible dependents.

S. 663, A BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II ACT OF 2009

The purpose of this bill is to amend title 38, U.S.C., to direct the VA Secretary to establish the Merchant Mariner Equity Compensation Fund, to provide benefits to certain individuals who served in the United States Merchant Marine (including the Army Transport Service and the Naval Transport Service) during World War II.

The American Legion has no standing position on this piece of legislation. However, it is the general policy of The American Legion to voice concerns about provisions which set up one class of veterans in an exclusionary manner to other groups or classes of veterans. It has long been The American Legion's position that a veteran is a veteran regardless of branch of service or occupational specialty. All of the men and women who have answered the call to serve their country are equal veterans and thus deserve equitable treatment under the law.

S. 728, VETERANS INSURANCE AND BENEFITS ACT OF 2009

The purpose of this bill is to provide enhancements to a broad variety of veterans' benefits. The benefits contained include improvements to benefits for veterans not only in insurance matters, but also to their compensation, pension and more.

The bill contains a long needed increase in the supplemental funds provided for funeral and burial expenses under the bill's Title III. The American Legion has long called for an increase in these funds, altered very little in the past since their inception in 1973, and therefore supports this bill.

S. 746

The purpose of this bill is to direct the VA Secretary to establish a National Cemetery in the Sarpy County region to serve veterans in the eastern Nebraska, western Iowa, and northwest Missouri regions.

The American Legion supports the establishment of additional national and state veterans' cemeteries and columbaria wherever a need for them is apparent and petitions Congress to provide required operations and construction funding to ensure VA burial in a national or state veterans cemetery is a realistic option for veterans and their eligible dependents.

S. 820

The purpose of this bill is to amend title 38, U.S.C., to enhance the automobile assistance for veterans, and for other purposes. This bill is noted to be an enhancement of the existing benefit provided to eligible veterans.

The American Legion supports all existing benefits due to veterans. As this bill represents an increase to one of those existing benefits, The American Legion is supportive of this bill.

S. 842

The purpose of this bill is to repeal the sunset of certain enhancements of protections to servicemembers relating to mortgages and mortgage foreclosures, to amend title 38, U.S.C., to authorize the VA Secretary to pay mortgage holders unpaid balances on housing loans guaranteed by the Department of Veterans Affairs, and for other purposes.

The American Legion supports this extension of benefits in line with the intents of H.R. 1106. Particularly in times of economic uncertainty The American Legion supports these efforts to assist the families of veterans in the protection of the housing benefits to which they are entitled.

S. 847

The purpose of this proposed legislation is to provide that utilization of survivors' and dependents' educational assistance shall not be subject to the 48-month limitation on the aggregate amount of assistance utilizable under multiple veterans and related educational assistance programs.

The American Legion has no standing resolution or specific position on this bill. However, The American Legion has been generally supportive of legislation and intents to enhance the benefits afforded to families and survivors of veterans.

DRAFT LEGISLATION—
CLARIFICATION OF CHARACTERISTICS OF COMBAT SERVICE ACT OF 2009

The purpose of this bill is to amend section 1154 of title 38, U.S.C., to clarify the additional requirements for consideration to be afforded time, place, and circumstances of service in determinations regarding service-connected disabilities.

The American Legion is seeking clarification of the portion of the legislation which reads, in part:

> "(A) Additional provisions in effect requiring that in each case where a veteran is seeking service connection for any disability due consideration shall be given to the places, types, and circumstances of such veteran's service as shown by such veteran's service record, the official history of each organization in which such veteran served, such veteran's medical records, and all pertinent medical and lay evidence."

Such language would not be acceptable should it provide that greater consideration be granted on the basis of a servicemember's Military Occupational Specialty/Air Force Specialty Code, or for any other reason to differentiate that one class of service be given greater priority over another class of service. The American Legion

has long maintained a standard of recognizing the contributions of all servicemembers who choose to defend the country of the United States.

The subsequent section, that which refers to the clarification of the definitions and provisions under section 1154(b), title 38, U.S.C., is apparently in keeping with the provisions supported by The American Legion in recent testimony before the House Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs on this topic. The American Legion is supportive, in recognition of the changing realities of modern warfare and war fighting, of the application of the provisions of that subsection to all veterans deemed to have service in a combat zone. This is a provision that has traditionally been afforded solely to the establishment of events in service which would lead to service-connection for a disability. Therefore, this is a provision which would apply to deserving veterans who can prove a valid diagnosis of a present condition and provide a medical nexus opinion linking that condition to the stated event.

Such events are noted to be consistent with previous interpretation of the statue to be consistent with the hardships and circumstances of service in a combat zone. The American Legion supports this provision of the legislation.

CONCLUSION

Thank you again, Mr. Chairman, for allowing The American Legion to present comments on these important measures. We will provide the Committee with further comments on the mentioned piece of draft legislation from Senator Akaka, if necessary. Also, should any further clarification or questions arise, we would be happy to provide any answers the Committee may require. As always, The American Legion welcomes the opportunity to work closely with you and your colleagues on enactment of legislation in the best interest of America's veterans and their families.

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA TO IAN DEPLANQUE, ASSISTANT DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Question 1. It appears to me that S. 475, if enacted, would place a spouse in a more advantageous position to Servicemembers on the question of payment of state taxes. Under current law, Servicemembers are required to pay taxes in the state of their actual residence on all non-military pay earned in that state. Under S. 475, a spouse would not. As an example, if S. 475 were enacted, a military couple who runs a gardening service as a side business would be taxed differently. The servicemember would have to pay state tax in the state where the business is located and the spouse would, if the spouse's home of record is one of the seven states where there is no state income tax, pay no state income tax. Can you comment on this differential treatment?

Response. Given the example above, an inequitable situation exists regardless of whether this bill is enacted or not. Ultimately, the concern would be that the most favorable situation be created for the overall family. The spouse and the servicemember should not be considered in competition with one another, rather the picture should be more holistic. Presumably the spouse and the servicemember would seek the most favorable tax status to retain the maximum wealth for their family, given in particular the struggles of some service families with pay scales in comparison to the private sector. The spouse is part of an intact family unit, so the overall result would presumably be more favorable to the servicemember family if any part of that family can enjoy more favorable tax status.

Question 2. For a number of states, especially Virginia, North Carolina and my home state of Hawaii, each of which has a significant population of active duty military personnel, enactment of S. 475 could result in a substantial loss of revenue to the state. These and other states would, of course, still have to provide basic services, such as schools, roads, and recreational facilities, and meet the needs for fire, police and other public safety concerns. It stands to reason—and I believe it happens in practice—that an active duty servicemember who enters the service in New York and is first stationed in Norfolk, Virginia, will retain his residency in New York, but, if that Servicemembers is subsequently transferred to Texas, the Servicemembers will most likely give up New York residency in order to take advantage of the fact that Texas has no state income tax. When that same servicemember is then transferred to Hawaii, his or her new "permanent" home of record will remain Texas—and it will remain Texas until the servicemember retires, when the Servicemembers may or may not return to Texas.

• Do you agree that this is a likely scenario?
• Do you see any inequity in this result?
• What obligation do you believe individuals have in contributing to the locality in which they are living?

Response. While it is likely that all individuals will seek the most favorable tax status available to them, it is not true to think that through state income tax alone do servicemembers and their families contribute to a locality. The very presence of the substantial military facilities in these states provide a great number of civilian jobs to local non-military residences, and these servicemembers still support the economy of these states with their purchases, sales taxes, and any applicable tolls. Servicemembers already engage in this transfer of residence, furthermore, these personnel are called upon to traverse the globe in the service of their countries and do so without question. Many fondly identify with certain states or localities in which they reside, have resided, and intend to return to . . . and thus wish to maintain an active role in the support of those communities from a distance.

Question 3. Given the fact that there could well be a challenge to the constitutionality of S. 475 if the bill is enacted, please describe what you believe would be a successful response to such a challenge.

Response. The American Legion does not hold a position on the constitutionality or lack thereof of S. 475. Therefore we can offer no comment one way or another as to the possible effects or interpretations of such.

Chairman AKAKA. Thank you very much, Mr. DePlanque.

And now we will hear from Ms. Poynter.

STATEMENT OF REBECCA NOAH POYNTER, DIRECTOR, MILITARY SPOUSE BUSINESS ORGANIZATION

Ms. POYNTER. Mr. Chairman, thank you for the opportunity to be here today and testify in support of the Military Spouses Residency Relief Act. I am here to speak on behalf of all military spouses who support this Act and to ask the Committee for its recognition and fair treatment of military spouses.

My name is Rebecca Poynter. I am a proud Army wife. My husband is a former Apache pilot warrant officer in the 82nd Airborne and is currently a major in the Army Medical Service Corps. I am here with my close friend, proud Navy spouse, Joanna Williamson. Joanna's husband is a former Marine and now serves as a Navy Lieutenant Commander.

Just as is the case for thousands of military families, in less than 45 days, Joanna's family will make their sixth military move in 8 years as they relocate from Virginia to California. Her husband will immediately deploy to Afghanistan. Likewise, my husband and I will move from Maryland to Oklahoma. Both of us—both Joanna and I—support our husbands' careers and we are dedicated to the United States Armed Forces.

The military spouses gathered here today represent the thousands of us across the country who support the Residency Relief Act. Our coalition includes veteran and active duty organizations: MOAA, AUSA, NMFA, the Air Force Association, and the Air Force Sergeants Association.

Throughout our Nation's history, the Federal Government has recognized that military service carries with it multiple relocations, and as a result, profound complications. In 1940, the Soldiers' and Sailors' Relief Act was enacted to protect servicemembers in those civil matters which are impacted by State residency. Under the protection of the SCRA, military members are allowed to declare a single home State that is a permanent State of residency while on active duty and for the duration of their service. The spouse who

is not covered under this law is equally subject to the Federal relocation orders, yet is not similarly protected. Spouses must change their State residency with each move and it is the military spouses who face the unique challenges of constant relocations.

In our voluntary military, 54 percent of servicemembers are married. There are approximately 750,000 active duty spouses, 92 percent of whom are women.

An important point for your consideration is that this Act allows for a single choice by providing to the military spouse the option of aligning with their servicemember spouse in sharing the same home State.

With the Military Spouses' Residency Relief Act, Congress has the opportunity to significantly improve the quality-of-life issues of voting, personal property ownership, and employment and education access. These are currently complicated, suppressed, and deterred by military moves.

Military spouses are disenfranchised from voting; oftentimes not arriving to a new State in time to vote in primaries, and they do not have ample opportunity to get to know the Federal, State, or local candidates. It is confusing when one State allows a military spouse to vote via absentee ballot, yet the State where the spouse is physically located does not. Where is she supposed to vote? Furthermore, military spouses who have purchased property or homes have a vested interest in that State. The ability to vote locally is in the best interest of not only the voter, but of the candidate and political system, as well.

In regard to personal property, a serious matter, current and often conflicting State laws create financial and administrative burdens resulting in the suppression of assets for military spouses. While an active duty servicemember may title, register, and maintain a car in their home State, their spouse may not. With each move, if a spouse chooses to keep his or her tenancy on property, they are required to pay hundreds of dollars each time they relocate. Spouses are forced to put all property in the name of the servicemember. The relocation process ends up suppressing the ability of all military spouses to own personal property, which in itself has a number of negative, long-lasting effects, including the ability to maintain solid credit histories.

Regarding employment, DOD acknowledges military spouses as major contributors to their families' financial well-being. Approximately 50 percent of spouses work. Military spouses are underemployed. We make $3.00 an hour less than our civilian counterpart. The Department of Defense says it is our frequent relocations that are the cause and states the primary challenge to military spouses is sustaining a career.

We are deeply encouraged by the Department of Defense outreach and funding of portable career training through the Military Spouse Career Advancement Initiative. However, in pursuing portable careers, the complication of multiple State residency causes tax confusion, educational costs, and administrative burdens which negatively impact the quality-of-life for military families.

Please allow me to briefly share one story from a spouse who supports this bill. In this particular case, a female military spouse had resided in multiple States and she suffered professional dam-

age as those three States fought over her residency. The tax issue almost cost her a security clearance, as well as her job.

Regarding education, spouses report being deterred from educational opportunities. For example, an unemployed spouse did not pursue an online masters program because after a military move, out-of-state tuition was simply too costly.

For those seeking education, retaining, maintaining a portable profession, all growing and positive trends with military spouses, a single home State can help the spouse spend less time clarifying residency and more time earning an income or completing an education.

With multiple military moves and without a consistent home State, the financial burdens of personal property, impediments to voting, deterrence to employment and education, will continue to fall squarely on the shoulders of us, the military spouse.

Mr. Chairman and Members of this Committee, military spouses are a Federal population. We are moved along with our servicemembers on Federal orders. Military spouses do not have a choice as to where or when they are relocated, or how often. Therefore, it is incumbent upon our Federal representatives in Congress to protect military spouses as they have already done so with military members.

Thank you, Mr. Chairman. This concludes my testimony.

[The prepared statement of Ms. Poynter follows:]

PREPARED STATEMENT OF REBECCA NOAH POYNTER, DIRECTOR, MILITARY SPOUSE BUSINESS ORGANIZATION

Mr. Chairman, thank you for the opportunity to be here today to testify in support of the Military Spouses Residency Relief Act. We are here to speak on behalf of all military spouses who support this act and to ask the Committee for its recognition and fair treatment of military spouses by supporting this provision.

My name is Rebecca Poynter. I am a proud Army wife. My husband served as an Apache Pilot warrant officer in the 82nd Airborne and is currently a major in the Army Medical Service Corps. I am here with my close friend and proud Navy spouse, Joanna Williamson. Joanna's husband is a former Marine and now serves as a Navy Lieutenant Commander.

Just as is the case for thousands of military spouses, in less than 45 days, Joanna's family will make their 6th military move in 8 years as they relocate from Virginia to California. Her husband will deploy to Afghanistan in June. Likewise, we will move from Maryland to Oklahoma; both of us in support of our husband's career and in dedication to the U.S. Armed Forces.

Joanna and I represent the thousands of military spouses across the country who support the Military Spouses Residency Relief Act. Our coalition also has the support from a number of veteran and active duty service support organizations including; MOAA, AUSA, NMFA, the Air Force Association, and the Air Force Sergeants Association.

Throughout our Nation's history, the Federal Government has recognized that military service carries with it multiple relocations and as result, profound complications to state residency. In 1940, the Soldiers' and Sailors' Relief Act was enacted to protect servicemembers in those civil matters which are impacted by state residency.

Under the protection of the SCRA, military members are allowed to declare a single "home state," that is a permanent state of residency, while on active duty for the duration their service. The spouse, who is not covered under this law is equally subject to the Federal relocation orders, yet is not similarly protected. Spouses must change their state residency with each move and it is the military spouse who bears the burden of constant relocation.

In our all volunteer military, 54% of servicemembers are married. There are approximately 750, 000 active duty spouses, 92% of whom are women.

An important point for your consideration is that this Act allows for a single choice by providing to the military spouse the option of aligning with their servicemember spouse in having the same home state.

By passing the Military Spouses Residency Relief Act, Congress has the opportunity to significantly improve the quality-of-life issues of voting, personal property, and employment and education access. These are currently complicated, suppressed and deterred by military moves.

Military Spouses are disenfranchised from voting; often times not arriving to a new state in time to vote in primaries and do not have ample opportunity to get to know the Federal, state or local candidates or adequate time to learn their policies and legislative agendas. It is confusing when one state allows a military spouse to vote via absentee ballot, yet the state where the spouse is physically located does not. Where is she supposed to vote? Furthermore, military spouses who purchase a home or property, have a vested interest in that community. The ability to vote locally is in the best interest of not only the voter but of the candidate and political system as well.

For personal property; current, and often conflicting, state laws create financial and administrative burdens for the military spouse resulting in the suppression of assets. While an active duty servicemember may title, register, and maintain, a car in their home state, their spouse may not. With each move, if a spouse chooses to keep his/her joint tenancy of personal property, they must change the registration and/or titling to the new state; requiring the spouse to pay several hundred dollars each time they relocate. To alleviate these types of fees, many spouses are forced to put all property in the name of the servicemember. The relocation process ends up suppressing the ability of all military spouses to own personal property which in itself has a number of negative long lasting effects including the ability to develop and to maintain solid credit histories.

Regarding employment, the Department of Defense acknowledges military spouses as major contributors to their families' financial well being. Approximately 50% of military spouses work yet we are under-employed. Military spouses make $3.00 less per hour than our civilian counterparts. The Department of Defense recognizes our frequent relocations as the cause and states the primary challenge for military spouses is sustaining a career.

We are deeply encouraged by the Department of Defense's and the Department of Labor's outreach and funding of portable career training through the Military Spouse Career Advancement Initiative. However, in pursuing a portable career the complications of multiple state residencies causes state tax confusion, educational costs and administrative tax burdens which negatively impact the quality-of-life for our military families.

Please allow me to briefly share a few of the disturbing stories from spouses who support this bill. In one particular case a female military spouse who had resided in multiple states suffered professional damage as three states fought over her residency. She reports that this tax issue almost cost her security clearance and ultimately her job. Other working spouses express concern over the expense of filing tax returns in multiple states, none of which are the same state as their servicemember spouse.

Regarding education, spouses report being deterred from educational opportunities. For example, one spouse was deterred from an online masters program because after a military move, out-of-state tuition was simply too costly.

For those seeking education or retraining or to maintain a portable profession, all growing and positive trends among military spouses, a single home state can lessen administrative, educational and tax burdens and help the spouse spend less time clarifying residency and more time earning an income or completing an education.

With multiple military moves and without a consistent home state, the financial burdens of personal property, impediments to voting, deterrents to employment and education will continue to fall squarely on the shoulders of us, the military spouse.

On the eve of May 8th, Military Spouse Appreciation Day, a day which, since 1984 has acknowledged the unique role of our Nation's military spouses, Joanna and I along with the hundreds of thousands of military families look forward to Congress' continued recognition of military spouses with the hopeful passage of the Military Spouses Residency Relief Act.

Mr. Chairman and Members of the Committee, military spouses are a Federal population; we are moved, along with our servicemembers, on Federal orders. Military spouses do not have a choice as to when or where they are relocated. Therefore, it is incumbent upon our Federal representatives in Congress to protect military spouses as they have already done so with our military members.

In the words of the Secretary of the Army, the honorable Pete Geren, who tells military families in installations around the world, "We recruit the soldier but we

retain the family." To fulfill our Nation's promise to military families we ask this panel to favorably report the Military Spouses Residency Relief Act out of Committee so this bill can go to the floor and all of your colleagues can vote to pass this vital piece of military family legislation.

Thank you Mr. Chairman, this concludes my testimony.

RESPONSES TO POST-HEARING QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA TO REBECCA NOAH POYNTER, DIRECTOR, MILITARY SPOUSE BUSINESS ORGANIZATION

Question 1. It appears to me that S. 475, if enacted, would place a spouse in a more advantageous position to servicemembers on the question of payment of state taxes. Under current law, servicemembers are required to pay taxes in the state of their actual residence on all non-military pay earned in that state. Under S. 475, a spouse would not. An example: if S. 475 were enacted, a military couple who runs a gardening service as a side business would be taxed differently. The servicemember would have to pay state tax in the state where the business is located and the spouse would, if the spouse's home of record is one of the seven states where there is no state income tax, pay no state income tax. Can you comment on this differential treatment?

Response. If the servicememember and the military spouse owned together a geographically-based business and their home state was a no-income tax state the following would result:

> His income from the business would be taxed as it is secondary and in the host state. Her income would not be taxed as it is primary income. However, to make this example completely consistent, if she had had a second job—say working at the movie theater—then theater income would be taxed by the host state as secondary income.

However, please note the difference between a geographically-based business and a portable business which is a much more likely scenario. A portable business is one that can be transported from location to location and may have absolutely no income from within the state in which it happens to have been moved.

In order to build a geographically-based business in contrast to a truly portable business, a servicemember and his/her spouse would need to be associated with a community for 3 to 5 years to acquire andmaintain customers and to produce income. Having large equipment such as a truck and insurance needed for working on the property of others makes this business too impractical to establish especially for a servicemember trying to store such equipment in conjunction with military housing. Your example also assumes there is income to be declared, as small businesses are not normally successful in the first 3 years particularly this one, which involves the purchase or lease of equipment and relies on long-term presence a in community.

Question 2. For a number of states, especially Virginia, North Carolina and my home state of Hawaii, each of which has a significant population of active duty military personnel, enactment of S. 475 could result in a substantial loss of revenue to the state. These and other states would, of course, still have to provide basic services, such as schools, roads, and recreational facilities, and meet the needs for fire, police and other public safety concerns. It stands to reason—and I believe it happens in practice—that an active duty servicemember who enters the service in New York and is first stationed in Norfolk, Virginia, will retain his residency in New York, but, if that servicemember is subsequently transferred to Texas, the servicemember will most likely give up New York residency in order to take advantage of the fact that Texas has no state income tax. When that same servicemember is then transferred to Hawaii, his or her new "permanent" home of record will remain Texas—and it will remain Texas until the servicemember retires, when the servicemember may or may not return to Texas.

A. Do you agree that this is a likely scenario?

B. Do you see any inequity in this result?

C. What obligation do you believe individuals have in contributing to the locality in which they are living?

D. In a situation the reverse of yours, Mrs. Poynter, if a military spouse was initially stationed in Maryland and then received a Permanent Change of Station to Texas, do you believe that that spouse would feel differently about the need for this legislation?

Response A. This question addresses the servicemember's actions as they pertain to Sec. 511 of the SCRA. Congress has already considered this possibility in the current law. The clear implication is that Congress believes the right of the majority

is more important than the speculative scenario. It is not common practice in my experience for a servicemember to change residency for this purpose.

In regards to the military spouse, we are a population who are relocated due to Federal military orders and we seek the extension of protection of an already existing law that protects our servicemember spouse.

Response B. The inequity results in not giving the military spouse the same consideration as the servicemember which disadvantages the spouse by not giving access to the same domicile protection that is provided to the servicemember.

One glaring example of where a spouse experiences differential (arguably discriminatory) treatment occurs with the payment of personal property tax in some states. In Virginia, for example, a servicemember can be exempted from the personal property tax when buying a new car. The spouse, however, cannot be exempted. Thus, a military spouse literally pays an extra price for living with and supporting the servicemember.

Response C. If you are referring to taxes a military family is contributing, if they own a home, it is their property taxes; if they rent the property owner pays taxes the same as any other renter in the comunity. If they live on the military installation, fire and police are covered as such.

There are major contributions made by the Federal Government to cover the imposition of Federal military bases to the states including schools.

For example, military children living in the United States generally attend a local public school and have a portion of their education expenses paid by the Federal Government through the Department of Education's Impact Aid program. Currently, Impact Aid provides $900 million per year in subsidies to approximately 1,400 local education agencies (LEAs), which enroll 1.2 million eligible children.

Furthermore the very presence of a military installation results in huge economic benefits in the state from the Federal Government and from the military population who spend locally. For Hawaii, Department of Defense expenditures, which include payroll, procurement contracts and grants, reached $6.1 billion in FY 2006.

The state's numbers tell the same story. According to the state of Hawaii's Department of Business, Economic Development and Tourism's (DBEDT's) 2002 study that examined how military spending circulates in the local economy, for every $1 billion in military expenditures, more than $1.5 billion of business is created in new business. In addition, the military creates more than 18,000 jobs locally and the state and local businesses benefit from nearly $1 billion paid in wages to military personnel and its civilian workforce can spend locally.

The more military families, the bigger the installation, the more spending. A recent New York Times article, using current census data, noted the negative effect of reduced (civilian) relocations due to the economic slump. When people move, in or out of a community, they spend money, lots of it. Military families spend "relocation" dollars several times over their civilian counterparts with each move.

However, the position that a military family is only viewed by the state as tax revenue is troubling.

By accepting the military lifestyle, military families are dedicated to service and more often than not, contribute substantially to their "host" community. They are active in their churches, in their children's schools, they shop (and pay sales and use taxes), pay rent, or decide to purchase property in their host community. During times of deployment, it is true that civic contributions are reduced as the servicemember is located in a combat zone while the military spouse is usually fully occupied with the task of running a single-parent household and working to make ends meet.

Does a host community not also have an obligation to support the servicemember families who have been transplanted to that community? First Lady, Michelle Obama, is quoted last week on the topic of what the community might consider in regard to military families.

"The outreach doesn't need to be a grand gesture, as even the smallest act is a signal to the military community that the Nation understands the sacrifices its servicemembers and their families are making," Obama said. And even though she, too, has endured having an absent spouse, she said, "there is no comparison to the extra burden on military spouses."

Response D. In regard to my personal situation, I offer this scenario: military spouses who own property in an income tax-free state, yet work in an income tax state due to a military relocation are subject to double state taxation as property taxes are much higher to offset the lack of income tax. The result is a higher tax burden than the servicemember spouse. Again, a military spouse literally pays an extra price for living with and supporting the servicemember.

Question 3. In your testimony your note that under the SCRA, a servicemember can declare "a single 'home state', that is a permanent state of residency while on

active duty for the duration of their service." Do you agree that there is no impediment under the law from a servicemember changing his or her 'home state' on more than one occasion during the course of the member's career? Is this not in fact something that is done with some frequency?

Response. This question addresses the servicemember's actions as they pertain to Sec 511 of the SCRA. Congress has already considered this possibility in the current law. The clear implication is that Congress believes the right of the majority is more important than this speculative scenario. I too do not believe that the good faith of all should be denied. It is not common practice in my experience for a servicemember to change residency with frequency.

The impediments or requirements for residency are stated on the Department of Defense form 2058 for information to be furnished to State authorities and to Members of Congress. This form clearly states that "physical presence in the new State with the simultaneous intent of making it your permanent home and abandonment of the old State of legal residence/domicile."

In addition, "Such intent must be clearly indicated. Your intent to make the new State your permanent home may be indicated by certain actions such as: (1) registering to vote; (2) purchasing residential property or an unimproved residential lot; (3) titling and registering your automobile(s); (4) notifying the State of your previous legal residence/domicile of the change in your State of legal residence/domicile; and (5) preparing a new last will and testament which indicates your new State of legal residence/domicile."

Question 4. Later in your testimony, in describing S. 475, you express the view that the legislation "allows for a single choice by providing to the military spouse the option of aligning with their servicemember spouse in having the same home state."

A. Do you agree that there is no limit in the proposed bill on the number of times a spouse could change his or her home state?

B. Do you believe that there is something in the legislation that would require a spouse to have the same home state as the servicemember? Given that many servicemembers and their spouses originally came from different home states, what would be the basis for assigning a single home state to them at the outset of their marriage or at any time during their marriage?

Response A. This question addresses the servicemember's actions as they pertain to Sec 511 of the SCRA. Congress has already considered this possibility in the current law. The clear implication is that Congress believes the right of the majority is more important than this speculative scenario.

The requirements for residency are stated on the Department of Defense form 2058 for information to be furnished to State authorities and to Members of Congress. This form clearly states that "physical presence in the new State with the simultaneous intent of making it your permanent home and abandonment of the old State of legal residence/domicile."

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Response B. I believe that the military spouse should have the choice to align his/her home state with their servicemember spouse. By virtue of military spouses' comments and letters, I believe military spouses would willingly choose to align his/her home state with their servicemember spouse. Simply, the residency complications that existed for servicemembers, and addressed in the SCRA, remain for the military spouse. By allowing spouses to maintain the same state of residency, those complications would be alleviated. This is an option, if a military spouse chooses, for whatever reason, he/she does not have share the home state of the servicemember.

Question 5. Given the fact that there could well be a challenge to the constitutionality of S. 475 if the bill is enacted, please describe what you believe would be a successful response to such a challenge.

Response. I am unaware on what grounds the constitutionality of this act would be challenged.

As mentioned in the Congressional Research Service brief, the SCRA has been deemed constitutional as has Congress' power to amend the SCRA. The SCRA coverage has already been extended to military spouses. In 2003, the SCRA included

protections for military spouses entering into contracts (cell phones, leases, utilities, etc.).

I believe that if the Congressional Research Service were tasked with the request to find how amending the SCRA is constitutional and to provide examples where the spouse is already protected by provisions of the SCAR, there would be little difficulty.

For example, when Congressional Research Service discussed in other testimony: *Cathey* v. *First Republic Bank*; it says First Republic Bank argued that the Catheys were not entitled to the interest rate reduction because the loans were signed by each of the Catheys, as well as their corporation, and as such are not covered by the SCRA. The court dismissed this argument and stated: "while it is the serviceman who is provided interest rate protection under the [SCRA] and not his co-makers, the result is the same."

Question 6. I would like to follow up on your response to my question during the hearing about voting locally. If I understand your reply, the concern is about the ability to vote in some locality but not necessarily the locality in which you are living. Is that correct?

Response. Military spouses risk being disenfranchised by being denied voting rights guaranteed by domicile rights and protected under law. The issue is a spouse should not be forced to do so because he/she complies with military orders.

Please note that the servicemember votes in the home state regardless of how long they have been away; 5, 10 of 15 years. "Locality" for the military is the home state, not the host state location in which you are living unless that happens to be the same as the home state.

In regard to my testimony a question occurred which ignored the preceding phrase so I would like to respond to the full concept and not its partial use. A military spouse who owns property (a home) particularly protests not being able to vote in the location she has clearly designated as home and in which she has a long-term financial interest.

Question 7. What impact do you believe a divorce would or should have on the "home of record" of a military spouse?

Response. None, state laws prevail.

ATTACHMENTS
FROM THE MILITARY SPOUSES RESIDENCY RELIEF ACT COALITION

VOTING

As a military spouse, I have made 7 moves to 6 different states in 10 years. In addition to a new state license and registration, this means I have registered to vote in 6 different states. Fortunately, I have always established residency with enough time to vote in the general elections for Presidential elections. However, the frequent moving has me at a disadvantage for local, state, and primary elections.

When I first registered to vote, I did so as a party member, specifically to participate in the primary system. As a military spouse, I have been unable to do so for two reasons; first, the issue of establishing residency with enough time to participate in the primary, and second, being unfamiliar with the local primary process, which vary from state to state.

In both local and state elections, instead of having an impact on my future, I am voting on issues and persons in an area where chances are, I won't be residing again. Instead of understanding the nuances of the area politics, I must rely on information from sources I am unfamiliar with. Often times I have not voted in the local elections, rather than vote for issues and individuals I am unfamiliar with.

This leaves me unable to exercise my rights as a citizen, to fully participate in the democratic process. I would love to think that my representatives would work to ensure that all of us who make the sacrifices to support our military spouses, who protect the rights of all, have our rights protected.

TERESA RUSSO,
Military Spouse.

LOSS OF COMMUNITY CONNECTION

I ask your support for the Military Spouses Residency Relief Act which will provide a home state for spouses. I was born in PA, and have maintained my residency there throughout my military career. I have recently separated from active duty to become a dependent to my active duty husband (who is also from PA). While I am affiliating with the Reserves, it fascinates me that I will be considered a dependent

and not be eligible to maintain my PA residency while I am following my husband's orders as we move for the third time in three years. We have always intended to return to PA, hence our maintaining residency. And now the hassle of having to split residency (wow, imagine the tax fiascoes with having two spouses with different residency). However, this is about parity. My husband can maintain his residency ties, but now I cannot. For a decision that I made to stabilize my family (and not have dual-active duty deployments), I have to pay a price. I also lose any ongoing connection to a community to become politically involved. Please support the Military Spouses Residency Relief Act which will provide a home state for spouses. This is about a better quality-of-life for military families. I want to be more involved with my community, present and future. This is a huge step to doing that.

WENDY ELIZABETH SCHOFER,
Military Spouse, Pennsylvania.

PROPERTY TAX AND STATE INCOME TAX CONFUSION

My name is Rikki Winters and I have been a Navy spouse since 2002. In those 7 years I have moved 7 times and held 4 jobs; none of which used my Electrical Engineering degree. After our fifth move and my fourth job I was laid off while my husband was deployed. This was the last straw for me so when we moved to Virginia I started my own business.

My husband signed a contract that resulted in our transient lifestyle. I support him 100% and am proud of his service. But he is also protected from the nightmares of constant moves. He does not have to worry about learning new state laws every move. I've received income from 4 different states—that is 4 different W–2's with 4 different states of residency.

We absolutely dread going to the DMV. We learned the hard way this last year after 3 trips to the DMV that Virginia charges annual personal property taxes on vehicles. My husband was expecting another deployment so we wanted to have both of our names on both vehicle titles. Three months later we receive a bill for our vehicle's Personal Property Tax. I called the treasurer at the city of Norfolk and she informed me that military members are exempt from the tax but since my name was on the title we would have to pay the tax. So, after numerous phone calls, faxes, and trips to the DMV we have new titles without my name on them. I do not own a vehicle and I never will as long as my husband is in the military.

Taxes are a confusing mess. My husband has residency in one state and I have residency in another state. Just this year our tax attorney had to redo our taxes because she was confused about both of our states of residence. She obviously had not worked with military members before. Next year is going to be even more confusing when I have a business registered in one state. My husband is a resident in another state and I will have been a resident of both Virginia and California since we will be moving next month.

As a military spouse I feel like I am forced into unnecessary hardships that could be easily rectified. Please make that job easier by supporting the Military Spouses Residency Relief Act.

RIKKI WINTERS,
Navy Spouse, Norfolk, VA.

PROPERTY TAX WITH DEPLOYMENT COMPLICATIONS

The M.S.R.R.A. would be a relief to the military member as well as their entire family. Most military members and spouses file their taxes jointly. This Act would allow the military servicemember and his/her "dependent" to more easily receive the benefits that they were granted in the S.C.R.A. For example, while some states do not tax personal property such as vehicles, others do. If a civilian spouse or family member is listed as an owner on said property, even if a military member is also on said property, then taxes are still applicable. If only the military member is owner of said property, then they are not. This becomes a difficult issue to manage when such property is being bought, sold or transferred from various states, especially when the servicemember cannot always be present during such transactions. The hassles of updating documents (i.e. Powers of Attorney) wouldn't be as big of an issue if the proposed Act were law.

CAROLYN DUFT LEVERING,
Navy Spouse, Stafford, VA.

EMPLOYMENT

In 2003 my Navy husband received permanent change in service (PCS) orders reassigning our family from San Diego, California to Washington D.C. In 2007, after

living in Maryland for 4 years, I received a letter from the IRS stating I had not paid my California State Taxes for the past 4 years and not only do I owe them $2,000 in back taxes, I am now being penalized and am facing garnished wages, penalty fines and outrageous interest rates on the uncollected amount. It was a shocking and terrifying situation. It took over 2 months worth of phone calls to California, Maryland, D.C, and the IRS to get the matter straightened out. I also work for the government and hold a high level clearance which was also in jeopardy. In addition to calling the states involved and the IRS I also had to get my employer involved and my Security Officer. Even though I was paying state taxes all along, I truly believe my military move was too confusing for the 3 states to keep up with. More often than not, when a military member is in transit to a new duty station, he/she has a 3 month school in-between. This makes it almost impossible for the following spouse to keep up with when claiming a state of residency.

HANNAH CABUCANA,
Navy Spouse.

EDUCATION

I am an Army wife at Fort Bliss in Texas trying to get my masters degree in education. I cannot find a program here in the city I live in to enroll, nor is there a program in the entire state of Texas I can enroll in online! I was shocked to learn this, with Texas being such a large state. Of course, the state I lived in for 22 years where my husband has his 'home of record' has a multitude of online programs I could enroll in if I could only claim this state—Florida—as my home of record. Without maintaining my residency, I cannot afford the tuition. While I anticipated problems other residency problems: voting (being unfamiliar with local politics, I only voted for the president and one senator in our recent November elections) and registering my car, obtaining a new drivers license and local teaching certification (at a cost of over $500 and still being unable to find a teaching job), I did not anticipate having issues enrolling in a masters degree due to residency.

KATIE MCCLURG,
Army Spouse, Fort Bliss, TX.

Chairman AKAKA. Thank you very much, Ms. Poynter.

My question is for all of the VSOs. There are a total of 16 bills on our agenda today. What three bills are most important to your organizations. Mr. Jackson?

Mr. JACKSON. Mr. Chairman, I think our testimony focused on your Veterans Rehabilitation and Training Improvements. That was the most important thing that we wanted to comment on, but there are so many really good bills on this agenda.

Senator Sanders' bill enhancing the Automobile Assistance Allowance is good. Senator Burr's bill, Military Spouses Residency Relief Act. Senator Ensign's bill on the qualifying loss of a dominant hand. All of them are extremely important. We just chose to focus on your bill, specifically.

Senator AKAKA. Thank you. Thank you very much.

Mr. Kelley?

Mr. KELLEY. I am certainly glad I got a chance to go second so I could review real quick. Our top three would be S. 728, S. 263, and Mr. Sanders' Automobile Compensation Bill.

Senator AKAKA. Thank you very much.

Mr. DePlanque?

Mr. DEPLANQUE. Thank you, Mr. Chairman.

It is difficult to rank them in a particular order. At the American Legion we tend to consider each bill separately and independently of any of the other bills. I would note that we have addressed a particular amount of attention to attempting to update aspects of the system to recognize the quality-of-life issues, and it appears that there are a number of pieces of legislation that are attempting to do that.

I would also note that both in the Senate and House we have paid particular attention lately to the clarifications of Sections 1154 of Title 38 as something that's reflective of perhaps changes in the modern battlefield.

Chairman AKAKA. Thank you.

Mr. Mason, I want to thank you very much for your helpful testimony and for the background and historical perspective you have shared with us on SCRA. Since you have raised the issue of the legality of S. 475, would the Library of Congress be able to offer a more detailed analysis of this issue for the record?

Mr. MASON. Yes, sir. I'll be working with one of our constitutional law experts and we will put a written product together for the record analyzing the different issues that might be in place, sir.

Chairman AKAKA. All right. Thank you very much. We appreciate that.

[The written product from Mr. Mason follows:]

WRITTEN INFORMATION FOR THE RECORD SUBMITTED BY R. CHUCK MASON, LEGISLATIVE ATTORNEY, AMERICAN LAW DIVISION, CONGRESSIONAL RESEARCH SERVICE

MEMORANDUM May 26, 2009

To: Senate Committee on Veterans' Affairs
Attention: Babette Polzer

From: R. Chuck Mason, Legislative Attorney, 7-9294

Subject: **Constitutional Analysis of S. 475, 111th Cong., 1st Sess., the "Military Spouses Residency Relief Act"**

This memorandum is in response to your request to evaluate the constitutionality of S. 475, the "Military Spouses Residency Relief Act." The bill, if enacted, would extend certain protections under the Servicemembers Civil Relief Act (SCRA)[1] to the spouses of servicemembers. S. 475 would amend three sections of the SCRA: (1) 50 U.S.C. § 568, Land rights of servicemembers; (2) 50 U.S.C. § 571, Residence for tax purposes; and (3) 50 U.S.C. § 595, Guarantee of residency for military personnel. Arguably, the proposed amendments could reduce burdens on military families related to residency and taxation issues that often arise as a result of frequent duty station transfers. However, to the extent that the bill, as drafted, confers certain benefits on a servicemember's spouse that are independent from those of the servicemember, its constitutionality may raise a question of first impression.

The SCRA was enacted on December 19, 2003 as a modernization and restatement of protections and rights previously available to servicemembers.[2] The purpose of the Act is to provide for, strengthen, and expedite the national defense by protecting servicemembers, enabling them to "devote their entire energy to the defense needs of the Nation."[3] The SCRA generally protects servicemembers by temporarily suspending certain judicial and administrative proceedings and transactions that may adversely affect their legal rights during military service.

Proposed changes to the SCRA

50 U.S.C. § 568 provides various land right protections for servicemembers, including rights in public lands, desert lands, mining claims, and mineral permits and leases. Under these protections, servicemembers may maintain rights to access and use public lands and to enter desert lands obtained before entering military service. The servicemember may also retain mining claims and mineral permits

[1] 50 U.S.C. app. §§ 501 *et seq.*

[2] Congress has long recognized the need for protective legislation for servicemembers whose service to the nation compromises their ability to meet obligations and protect their legal interests. During the Civil War an absolute moratorium on civil actions brought against soldiers and sailors was enacted (Act of June 11, 1864, ch. 118, 13 Stat. 123). During World War I, Congress enacted the Soldiers' and Sailors' Civil Relief Act of 1918 (40 Stat. 440 (1918); followed by the Soldiers' and Sailors' Act of 1940 (Act of October 17, 1940, ch. 888, 54 Stat. 1178) during World War II.

[3] 50 U.S.C. app. § 502.

and leases in the event of nonperformance of the requirements of the lease while on active duty. Generally, an individual must be at least 21 years old in order to exercise such land rights; however the Act creates an exception to the age requirement and allows all servicemembers, regardless of age, to exercise rights related to lands owned or controlled by the United States. Additionally, residency requirements for purposes of exercising the land rights, are suspended for six months after release from military service. As enacted, the Act does not provide the same protections and rights to a servicemember's spouse or dependents. Under S. 475, the spouse of a servicemember would be entitled to the same suspension of residency requirements for a period of six months after the servicemember is released from military service.

50 U.S.C. § 571 prevents multiple state taxation on the property and income of military personnel serving within various tax jurisdictions[4] by reason of military service. The Act provides that "[a] servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders." The duty station tax jurisdiction may not include military compensation earned by a nonresident servicemember to compute its state income tax liability. The duty station jurisdiction may tax non-military income earned by the servicemember and/or the spouse. Additionally, personal property of a servicemember is not be subject to taxation by a jurisdiction other than his or her domicile or residence while serving at a duty station outside of his or her home state. S. 475 would expand the language concerning residency for tax purposes to include the spouse of a servicemember. Under the proposed language, the spouse would neither lose nor acquire a state of domicile or residence for taxation purposes when he or she accompanies the servicemember to a duty station outside the home state in compliance with military orders. Income earned by, and personal property of, the spouse, while in a jurisdiction pursuant to the military orders, would not be subject to taxation by that jurisdiction. Rather, the income and property of the spouse would be subject to taxation only by his or her home state.

50 U.S.C. § 595 provides that military personnel are not deemed to have changed their state residence or domicile for the purpose of voting for any federal, state, or local office, solely because of their absence from the respective state in compliance with military or naval orders. S. 475 would expand the provision to apply to the spouse of a servicemember, therefore guaranteeing that his or her state residence or domicile for the purpose of voting for any federal, state, or local office, would not change solely because of an absence from the respective state while accompanying a spouse to a duty station in compliance with military orders.

Constitutional Analysis

The question at issue is whether the proposed amendment could precipitate a conflict between congressional power to regulate the military pursuant to its constitutional War Powers and the reserved right of the states to tax. The powers of the federal government, while limited to those enumerated in the Constitution,[5] have been interpreted broadly, so as to create a large potential overlap with state authority.[6]

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[4] "Tax jurisdiction" is defined to include "a State or a political subdivision of a State," which would include the District of Columbia and any commonwealth, territory or possession of the United States (Sec. 101(6)). "Taxation" includes licenses, fees, or excises imposed on an automobile that is also subject to licensing, fees or excise in the servicemember's state of residence. "Personal property" includes intangible and tangible property including motor vehicles.

[5] Article I, §1, of the Constitution provides that "All legislative Powers herein granted shall be vested in a Congress of the United States . . . ." Unlike a typical grant of power to states, Article I, §1, does not grant to Congress "all legislative power," but rather grants to Congress only those specific powers enumerated in § 8 and elsewhere in the Constitution.

Significant powers exercised by Congress are the War Powers,[7] which include the power to raise and support an army. The scope of the congressional and executive authority to prescribe the rules for the governance of the military is broad and subject to great deference by the judiciary.[8]

Although such issues have rarely come before the U.S. Supreme Court, it has considered the structure and balance of the SCRA in circumscribing state law in order to promote the interests of the military as an entity, and servicemembers in their individual capacity. In *Dameron v. Brodhead,*[9] the Court addressed the question of the power of the federal government to limit a state's right to tax property within its jurisdiction. The case involved a challenge to the provision in the Act prohibiting state taxation on the property and income of military personnel serving within a tax jurisdiction in compliance with military orders.[10] Dameron, a commissioned officer in the U.S. Air Force, sued Brodhead, in his capacity as a city and county official of Denver, Colorado, for the recovery of $23.51 in taxes on his personal property assessed while Dameron was stationed in Colorado. Dameron argued that his domicile was Louisiana and that pursuant to the SCRA he was exempt from assessment by a tax jurisdiction other than his domicile. Brodhead asserted that the language of the Act did not prevent Colorado from taxing the servicemember's personal property because the law's purpose was to prevent multiple taxation of military personnel, and since Louisiana had not taxed Dameron's personal property, Colorado could. If the SCRA did prevent the tax in question, Dameron contended that it was unconstitutional. With respect to the constitutional question, the Court stated that:

> [t]he constitutionality of federal legislation exempting servicemen from the substantial burdens of seriate taxation by the states in which they may be required to be present by virtue of their service, cannot be doubted. Generally similar relief has often been accorded other types of federal operations or functions. And we have upheld the validity of such enactments, even when they reach beyond the activities of federal agencies and corporations to private parties who have seen fit to contract to carry on functions of the Federal Government.[11]

The Court held that servicemembers' "duties are directly related to an activity which the Constitution delegated to the National Government . . . 'to declare war' and 'to raise and support Armies.'"[12] The

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(...continued)

[6] For instance, Article I, § 8, cl. 18 provides that "[t]he Congress will have power ... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States or in any Department or Officer thereof." Early in the history of the Constitution, the Supreme Court found that this clause enlarges rather than narrows the powers of Congress. As stated by Chief Justice Marshall in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819): "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

[7] U.S. Const., Art. I, § 8, cl. 11-14 provide that:

The Congress shall have power . . . To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water[;] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years[;] To provide and maintain a Navy[;] To make Rules for the Government and Regulation of the land and naval Forces.

[8] *Rostker v. Goldberg*, 453 U.S. 57, 64-68 (1981); *Brown v. Glines*, 444 U.S. 348, 353-58 (1980); *Schlesinger v. Councilman*, 420 U.S. 738, 746-48 (1975); *Greer v. Spock*, 424 U.S. 828, 837-38 (1976). *See* Johnny Killian, Kenneth Thomas, & George Costello, UNITED STATES CONSTITUTION: ANALYSIS AND INTERPRETATION 332 (2002 ed.).

[9] *Dameron v. Brodhead*, 345 U.S. 322 (1953) (The case questioned a provision in the Soldier's and Sailor's Civil Relief Act, but for ease of discussion this memorandum will refer to the SCRA and its predecessor as the "Act").

[10] The challenged section being § 514 of the SSCRA (50 U. S. C. App. §574), restated and codified as § 571 of the SCRA (50 U.S.C. § 571).

[11] *Brodhead* at 324-325 (Citing *Carson v. Roane-Anderson Co.*, 342 U.S. 232 (holding that contractors with the Atomic Energy Commission were exempt from state sales and use tax by section 9(b) of the Atomic Energy Act of 1946)).

[12] *Id.* at 325 (internal citations omitted).

Court further held that "congressional exercise of a 'necessary and proper' supplementary power such as this statute must be upheld."[13] In effect, SCRA preempts state laws which would tax the service-related income or personal property of servicemembers at their duty station when it is not their domicile. The Court concluded the constitutional discussion by stating, "[w]hat has been said in no way affects the reserved powers of the states to tax. For this statute merely states that the taxable domicile of servicemen shall not be changed by military assignments. This we think is within the federal power."[14]

In contrast, the dissent in *Dameron* emphasized states' right to tax over Congress' War Powers authority, stating "[t]he power to tax is basic to the sovereignty of the states."[15] Acknowledging that limits exist on congressional restrictions on states' right to tax, the dissent looked to those instances where a federal instrumentality, or the means by which an instrumentality performs its functions, are immune from state tax as being most similar to the prohibition under the Act.[16] It noted a previous holding in G*raves v. New York*[17] that wages of federal employees, which include servicemembers, could be taxed on a nondiscriminatory basis by the states.[18] The dissent further argued that a servicemember "receives protection and benefits from the society which the states create and maintain. . . . If he gets tax immunity, it means that other citizens must pay his share."[19] It concluded with the assertion that "[w]hen Congress undertakes to protect [servicemembers] from state taxation or regulation, it is not acting to protect either a federal instrumentality or any function which a federal agency performs. Congress, therefore, acts without constitutional authority."[20]

A solid majority (seven of the nine Justices) concurred in the majority opinion in *Dameron*, with much of the discussion focused on the servicemember's relationship to the federal government. The Court reasoned that servicemember's "duties" are directly related to an activity (to raise and support an army) delegated to Congress, and, as such, within Congress' authority to regulate. The full extent of Congress' authority to extend limitations on the reach of state law with regard to individuals, based exclusively on a spousal relationship with a servicemember, is less clear. Previously Congress expanded certain protections of the Act to include spouses and/or dependents of servicemembers (e.g., maximum interest rate on debts[21]), but generally these protections require the existence of a joint obligation before the Act may be invoked. The Act does allow for a spouse and/or dependent of a servicemember to petition a court for certain protections under the SCRA, but the court may only extend the protections if it finds that the ability to comply with the terms of a covered contract are materially impaired by the military service of the person upon whom he or she is dependent.[22] If enacted, S. 475 would provide individual protections to the spouse of a servicemember with respect to residency for land rights, taxes and voting purposes. The common requirement of the expanded protections is that the spouse must accompany the servicemember on military orders away from his or her domicile. However, it appears that the proposed amendments create an inconsistency in taxation of servicemembers and their spouses. Currently, any income earned by a spouse and any non-military income earned by the servicemember may be taxed by the duty station tax

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[13] *Id.*

[14] *Id.*

[15] *Id.* at 327 (Citing *Railroad Co. v. Peniston*, 18 Wall. 5).

[16] *Id.*

[17] *New York v. Graves*, 306 U.S. 466 (1939).

[18] *Brodhead* at 328 (Douglas, J., dissenting).

[19] *Id.* at 328-329.

[20] *Id.* at 329.

[21] 50 U.S.C. app. § 527.

[22] 50 U.S.C. app. § 518.

jurisdiction. Under the proposed amendments, the spouse would not be subject to tax at the duty station, but non-military income earned by the servicemember would still be subject to taxation by the duty station tax jurisdiction. Arguably, the spouse of a servicemember would enjoy greater protections, i.e., immunity from duty station income tax, under the SCRA than would the servicemember.

Federal regulation of state residency requirements may in itself be unusual, but there does not appear to be a significant question as to whether Congress' War Powers are sufficient to support such a regulation. The interest of the armed forces in family cohesion and troop morale may be sufficient justification for a legal requirement allowing servicemembers and their dependants to maintain the same domicile regardless of where they are stationed. It could be argued that this requirement would serve the broader interests of the federal government in raising and maintaining its troops and therefore be within Congress' constitutional authority. In *Boone v. Lightner*, the U.S. Supreme Court, while addressing the level of discretion afforded courts under the SCRA, stated that "[t]he [Act] is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation."[23] The stated purpose of the Act is "to provide for, strengthen, and expedite the national defense" by minimizing burdens on servicemembers, enabling them to "devote their entire energy to the defense needs of the Nation."[24] It may be plausibly argued that simplifying residence requirements to include spouses, presumably individuals who organize their affairs to accompany servicemembers to their duty station, allows servicemembers to "devote their entire energy to the defense needs of the Nation."[25] The degree to which permitting military families to limit income tax payable on non-military income earned in the duty station jurisdiction achieves comparable goals, without imposing undue limitations on the duty-station state, is not settled.

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[23] *Boone v. Lightner*, 319 U.S. 561, 575 (1943).

[24] 50 U.S.C. app. § 502.

[25] In a similar manner, Congress has acted to prohibit states and/or local jurisdictions from assessing a personal property tax on a motor vehicle owned by a Member of Congress (or by his or her spouse) while maintaining a place of abode for purposes of attending sessions of Congress (H.R. 3067, § 3067, incorporated into Act of December 19, 1985, P.L. 99-190, § 101(c), 99 Stat. 1224 by Act of December 22, 1987, P.L. 100-202, § 106, 101 Stat. 1329).

Chairman AKAKA. Ms. Poynter, your testimony argues that "the ability to vote locally is in the best interest of not only the voter but of the candidate and political system, as well." Can you explain how the protection of residency for the purposes of voting, which would permit an individual to vote in a State where he or she once lived, protects the ability to vote locally?

Ms. POYNTER. In this example, a former servicemember—it was a two-career, married couple, and the letter is in your packet. This particular couple had purchased property and she was no longer an active duty servicemember. She was stunned at the lack of benefits and protection—shall we say rather than benefits—that went with being simply a military spouse, as she had been accustomed to the protection under the SSCRA.

And in her example, which is in your packet, she and her husband had purchased property and had a home that they considered their ultimate home. He could keep that State residency as an active duty servicemember; she was stripped of it. And she indicated that that discouraged her from her community affiliation and her relationship with what will be their retirement home and is the community that they identify with and want to stay protected.

So, in that very specific example that was a very poignant situation to her.

Chairman AKAKA. Thank you very much.

Senator Burr, your questions.

Senator BURR. Thank you, Mr. Chairman.

Mr. Mason, I am not a lawyer and I am sure the interpretation you gave is probably legally accurate, but let me ask you a couple of questions.

Currently, spouses of servicemembers are already under SCRA protection—they extend to those spouses latitude when entering into contracts like phone, utility, leases relative to the frequency of moves. Hasn't the Government already acknowledged through doing that and through providing that benefit that a spouse is absolutely vital to the servicemember's ability to serve; therefore, raising an Army?

Mr. MASON. Sir, that is completely valid and we have been discussing that within our office while reviewing this. There are many aspects of the Servicemember Civil Relief Act that do incorporate the spouse and allow for them to have the protections such as NB housing and the ability to not evict somebody from a house if they fall behind on payments; the ability to break a lease on an apartment if the family gets transferred.

Those all are current in the law. We, at this point, based on my research, are unaware that they have been legally challenged. The aspect that we are looking at here—talking specifically about taxation going back to the *Dameron* case from 1953—it was a 7–2 decision where the Supreme Court held that the Government has the ability to do it, but all of the language was specific to the servicemember, sir.

So the question—we are not saying that it is unconstitutional; we are raising the prospect that there could be a legal challenge based on the language, sir.

Senator BURR. *Dameron* was a challenge to the servicemember or the spouse's salary?

Mr. MASON. No, sir, the servicemember—in 1942 is when Congress enacted the prohibition on double taxation. The servicemember in question filed a lawsuit because he had to pay roughly $21.00 in taxes to the city of Denver, and he felt that he, under the protections of the SSCRA at the time, should not have to pay taxation. So, they challenged that provision. That is when the Supreme Court came down and said that the SSCRA or the SCRA now, sir, is a constitutional action on behalf of Congress through its power to raise and support the armies. All the language, because it was specific to a servicemember, listed the fact of the servicemember being in this position and having to serve. There wasn't a discussion on family members or a spouse at that point.

Senator BURR. You're exactly right. There wasn't a discussion in that case.

Mr. MASON. No, sir.

Senator BURR. The fact that the protection does extend to spouses for the purposes of entering into contracts and the ability to break a contract, one would believe that a spouse de facto—because the Government has interpreted it that way—would, if Congress wanted, have the same provisions, same rights, as a servicemember.

Mr. MASON. Yes, sir. Except there are provisions of the SCRA that specifically have been found that the spouse does not enjoy the

protection on a single—one example would be the 6 percent cap on prior debts. If it is a debt that is solely entered by the spouse, they are not entitled to the 6 percent reduction.

Senator BURR. So the intent of those that wrote this protection was that as long as all the property—personal and real—is in the servicemember's name, it falls under this protection; but if any of it is in the spouse's name, we are not going to include it.

Mr. MASON. Based at the time that it was established, sir, and enacted, yes. And that was probably based on the—

Senator BURR. But to accept that is to accept that there was an intent on the part of Members of Congress that wrote this to force the property in a family of a servicemember to all be listed in the servicemember's name. I don't buy for a minute that that was the intent of the legislation. I think that, if you look historically at this, the movement of servicemembers when this was written was not with the frequency that we move servicemembers today. And though the letter of the law does not evolve with time, the interpretation of law, I think, has to evolve with time. And I think that's one of the reasons that the interpretation today is that the contractual provisions now extend to spouses where they may not have had to extend at the time of the creation of the legislation.

By the same factor, I would think that, when this was originally written, the likelihood was that the spouse did not work outside the home. Therefore, spouse's salary was not a consideration in the construction of the protection. If one were to construct the protection today, it would take into account the frequency of moves, the likelihood of contractual obligations that would have to be broken to meet the duty of a servicemember—the realities of practically every spouse who works.

And I would say, for the purposes of this legislation, the intent is to try to live up to what Secretary of the Army, Pete Geren said. And I want to quote him. "The strength of this Army depends on the strength of the soldiers and the strength of their families. We owe our families a quality-of-life equal to the quality of their service."

If you believe that provisions do evolve with time and conditions, then one would look at this and say, for us to fulfill what the Secretary of the Army and I think most of us would agree is the quality-of-life of families, why would we continue to extend the burden that disenfranchises in some cases spouses from their right to vote; their ability to claim a permanent residency; their ability to plan so that children's tuitions might be determined based upon that permanent residency and not based upon the lottery of where the Department of Defense happens to place them at any given point in time?

I think the one thing that became apparent to me as I began to research this is that it is tough enough on the children of family members as they grow up in different locations. It is even tougher when you realize that they really are nowhere long enough to consider that anywhere is home. And typically, when you ask somebody that grew up in a military family where they are from, they refer to "I am from a military family," which means I don't have a home.

I think the fact is that we are trying to create a place that families can call home. And it may be not a place that they revisit until the retirement of the servicemember and the spouse, but my hope is that, through this small act, which I think is appropriate for us to do and I hope every bit constitutional, that more and more servicemembers and their spouses will have an opportunity to retire in that place versus what I think Secretary Geren has expressed—that, in the absence of us recognizing that family quality-of-life is important, the servicemember and the spouse may no longer be together at retirement if, in fact, we don't address the quality-of-life of that family.

Mr. Mason, I appreciate it. Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Burr.

Senator Sanders, your comments and questions.

Senator SANDERS. First, let me thank all of our panelists for being here and thanks for your testimony.

Mr. Chairman, I just wanted to briefly discuss with the panelists two pieces of legislation that I am actively involved in.

Number 1 is an effort to increase the benefit for those soldiers who have lost their legs or their arms and to make sure that when they come home they will have an automobile that they can get around in. When we talk about the quality-of-life for our veterans, if somebody is immobile and forced to stay at home and can't get around their community, that is certainly a diminution of their quality-of-life.

Historically, in 1946, the VA did the right thing when they said for those people coming home from World War II, we are going to pay 80 percent of the cost of a new vehicle. And what has happened, Mr. Chairman, as you know, over the years the price of automobiles has gone up substantially that the benefit today is about 40 percent—half of what it was originally intended to be.

So what our bill does is raise in dollars the benefit from $11,000—if you want to buy a decent new car today, $11,000 does not go terribly far—to $22,500. And that, again, gets us back to the original intent. I think it will give a lot of mobility to a lot of people who deserve that mobility—those that were disabled in service to their country.

I want to thank for their support of this legislation in their testimony today: the American Legion; the VFW; and AMVETS. In addition, I want to thank the Paralyzed Veterans of America and the DAV for their support of this legislation which was included as a recommendation in this and previous years' *Independent Budget*. I want to thank all of those who are supporting this legislation for their support.

The other piece of legislation that I wanted to spend a moment on, Mr. Chairman, is one that I am working with Senator Feingold on; and that deals with outreach. We have discussed outreach quite a bit on this Committee, and the bottom-line here is that no matter what the VA does in providing services to our veterans—and we all hope that those services are as strong and good as they can be—they don't mean anything if somebody is not accessing the VA system.

Now, a veteran may come home and for all the right reasons say, look, I choose not to participate in VA programs. That's fine. But

what has concerned me for many years is that a lot of veterans do not know what they are entitled to. They could reject it, but if they don't know what they are entitled to, that's simply not fair.

And I think I am not telling any stories out of class here to suggest that for some years the truth is that the VA did not want veterans to know what they were entitled to because they save money. Right? If you don't know what the benefit is, I don't have to service you. I don't have to spend money. That's wrong. That is really wrong. Every veteran should know what he or she is entitled to.

In Vermont, a couple of years ago, we started a strong outreach program, which has been quite successful in bringing those returning vets from Iraq and Afghanistan, who may have PTSD or TBI, into the VA system; and when you're dealing with people with PTSD that's a special problem. They may not even be aware of their problems; they may be embarrassed about their problems. So you've got to make an outreach effort.

And what our legislation—the bill that I am cosponsoring with Senator Feingold—does is, it puts within the VA budget funds to reach out to service organizations and other organizations to help with outreach. Now, the VA may say, well, we are doing a great job on it. They are doing better today than they were some years ago, but they are still not doing good enough. And sometimes community organizations know the veterans in certain rural areas or urban areas better than the VA might. That's the simple truth.

And I would remind the VA—not that we are ever going to go back to this policy so long as we are sitting up here—but in 2003, not so long ago—some of you may remember that the VA actually put out a memo forbidding VA medical directors from conducting outreach. Do you know that? That was not so long ago—2003. Do not do outreach. Do not tell veterans what they are entitled to.

I was in the House at that time and active in getting that memo rescinded, but that was where they were back then. We don't ever want to be there again. So I think the VA is doing a better job with outreach. We want to support that effort, but we also want to support the service organizations, other organizations in Vermont, and many other states and state government agencies that work with veterans. They may need some help. But the bottom-line is to let every veteran in America know what he or she is entitled to. If they choose not to participate in the program, that's their decision, but they should know.

So that's what that is about. And Mr. Chairman, we look forward to proceeding on that legislation.

I would now be delighted if any member of the panel would like to comment on either of those pieces of legislation.

Mr. KELLEY. Ray Kelley from AMVETS on your legislation—S. 315. I couldn't agree more.

I returned from Iraq a little over 2 years ago, and as recently as last week I received a phone call from one of the 12 people I deployed with asking where do I go? Who do I see? What do I qualify for? This is very important.

Senator SANDERS. Thanks, Mr. Kelley. Mr. DePlanque?

Mr. DEPLANQUE. Thank you, Senator. Ian DePlanque from the American Legion.

I would agree with you on the outreach and how essential it is. I will also say, on behalf of the VA, we deal with many facets of the VA and many sections of the VA. And in our interactions with them recently they have been very encouraging in asking us to help with the outreach because they recognize that the Veterans Service Organizations, being grassroots, are very well distributed in the communities, so that is indicative of the fact that they are trying to get the outreach out there. I think anything that supports getting veterans to know what they are entitled to, what is available to them, is essential.

Senator SANDERS. Thank you very much. I absolutely agree with that.

That's, I think, especially true in a rural State like mine where you have people who might be coming home who are way up there in a rural area, who local folks—the local VA guy, local American Legion commander—may know something and have that ability to communicate. It is important.

Any other thoughts? OK. Well, thank you all very much. Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Sanders.

Again, I want to thank our witnesses for appearing today. Your responses will be very helpful to us. For the information of all, the Committee's markup is scheduled for May 21, and it is my hope that at that time we will move on a number of bills that have been presented today.

I want the witnesses to know that your full statements will be entered into the record. For the Administration witnesses, I ask that views not submitted here today on a number of bills be submitted to the Committee no later than 1 week prior to the markup—by May 14.

Again, I want to say thank you and I look forward to continuing to work with you. This hearing is adjourned.

[Whereupon, at 11:13 a.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. MIKE JOHANNS, U.S. SENATOR FROM NEBRASKA

I am pleased to be here today, and to be working with my colleagues on an issue that is truly critical: benefits for those brave Americans who have served our country honorably. I would like to welcome Mr. Bradley Mayes from the Department of Veterans' Affairs, and hope to hear about how the legislation before this Committee can improve the allocation of VA benefits.

We are also fortunate to have with us some representatives of Veterans Service Organizations, who usually have the best and most timely information on specific challenges facing America's veterans. I am thus especially glad that Mr. Jackson, Mr. Kelley, Mr. Mason, Mr. DePlanque, and Ms. Poynter will be able to join us for the second panel.

American veterans are part of our great national tradition of military service. The benefits they earn can never fully compensate them for their sacrifices, but we must still try to ensure that every veteran is well cared for by a grateful Nation.

One of the initiatives I am thus very proud of is S. 746, a bill I introduced with Senator Nelson. This legislation directs the VA to place a national cemetery in the Sarpy County region, which encompasses much of eastern Nebraska. Nebraska's passed veterans deserve a resting place commensurate with their contribution to America's safety, and I am proud to help get them one. All of our veterans—and particularly those who have made the ultimate sacrifice—deserve a final home close to their loved ones.

But our responsibility is not just to those veterans who have left us; it extends particularly to those veterans still with us today. Military personnel and their families face many challenges, both in the course of their service and when they transition to civilian life. One of these challenges is the continual relocation of servicemembers to new locations in the United States, to say nothing of the deployment tempo demands of a Nation at war.

That is why I am proud to be a cosponsor of S. 475, the Military Spouses Residency Relief Act. This bill would allow military spouses relocating because of their husband or wife's military orders the ability to claim one constant state of domicile. As a civilian Nebraskan who moved to Washington to serve his country, I know well the endless paperwork involved with moving between states. Bureaucratic red tape can require dozens of hours to navigate. I can only imagine how frustrating it is for military families, constantly receiving new orders, to keep up with the bureaucracy of service. National service is rigorous enough: excessive red tape should not make it harder.

I would like to thank again the witnesses for speaking before us today, and hope that with the help of your testimony, we can wrap up some of the critical veterans' benefits issues in front of us.

PREPARED STATEMENT OF HON. BEN NELSON, U.S. SENATOR FROM NEBRASKA

Mr. Chairman, I would like to thank you for this hearing on veterans' benefits and would like to take this opportunity to highlight two measures that I have introduced to honor our veterans this Congress. I introduced the "Belated Thank You to the Merchant Marines of World War II Act of 2009"—S. 663. In addition, I introduced, S. 746, a bill to direct the Secretary of Veterans Affairs to establish a national cemetery in the Sarpy County region to serve veterans in eastern Nebraska, western Iowa, and northwest Missouri.

I will first address, S. 663. Mr. Chairman, and Members of the Committee, as you well know, World War II United States Merchant Mariners bravely served alongside America's military. Inspired by patriotism, the Merchant Mariners proudly dedicated themselves to supporting the missions and completing their duty to our coun-

try, without fanfare, and at great risk to their personal safety. These brave men volunteered for an essential effort during a time of war, which eventually led to our country's victory. Unfortunately, for over 40 years, our Nation has declined to acknowledge their contributions and sacrifices.

World War II Merchant Mariners suffered a higher casualty rate than any of the branches of service while they delivered troops, tanks, food, airplanes, fuel and other necessary supplies to every theater of the war. Soldiers on the frontlines would not have been able to complete their missions if the Merchant Mariners hadn't braved dangerous waters with essential supplies. The Merchant Mariners provided critical logistical support to the war and their efforts have been recognized in the *Oxford Companion to World War II* as one of the most significant contributions made by any nation to victory in World War II.

During every invasion from Normandy to Okinawa, they were there. In the most dangerous of waters, in the face of threats and attacks from submarines, mines, armed raiders, destroyers, aircraft, and the elements, the Merchant Mariners were there.

Though the numbers of the Merchant Mariners were small, their risk of dying during service was extremely high. Enemy forces sank over 800 Merchant Mariner ships between 1941 and 1944 alone. About 9,300 Mariners were killed, 11,000 were wounded, and 663 were taken prisoner.

At the end of the war, one out of every 26 Merchant Mariners serving aboard merchant ships in World War II died in the line of duty, the highest casualty rate of any branch of the service.

Merchant Mariners casualties were kept secret during the War to keep information about their success from the enemy and to attract and keep Mariners at sea. Unfortunately, to this day, more than 60 years after the end of World War II, the Merchant Marine remains the forgotten service.

Despite their service in support of the war effort, this country has dealt this class of World War II veterans a great disservice. They were denied benefits under the 1945 G.I. Bill of Rights—benefits granted to all those who equally admirably served in the Army, Navy, Marine Corps, Air Force or Coast Guard. Only the U.S. Merchant Marine was excluded.

Upon signing the G.I. Bill on June 22, 1944, President Franklin D. Roosevelt said, "I trust Congress will soon provide similar opportunities to members of the Merchant Marine who have risked their lives time and time again during war for the welfare of their country."

In 1988, the Merchant Mariners did finally receive a "watered down bill of rights." But some portions of the G.I. Bill have never been made available to veterans of the Merchant Marine.

No education benefits were available to Merchant Mariners. No low-interest home loans. No lifetime compensation for war-related injuries and disabilities. No use of VA hospitals. No priority for local, state, and Federal jobs. No Social Security credit for wartime service.

While it is impossible to make up for more than six decades of unpaid benefits, I am proposing a bill that will acknowledge the service of the veterans of the Merchant Marine and offer some compensation for their service in World War II.

The Belated Thank You to the Merchant Mariners of World War II Act of 2009, will establish a compensation fund to provide benefits to crewmembers of the United States Merchant Marines who served on vessels working for and operating with the U.S. Government or Armed Forces from December 7, 1941 until December 31, 1946. This bill would provide a small amount of compensation for those who risked their lives to contribute to our success in World War II, only to be forgotten.

This legislation was introduced in the 110th Congress and received the support of 61 Senate co-sponsors. Our efforts during the 110th were not without success in Congress. The House passed the legislation during the 110th and now is looking to the Senate for passage.

There is overwhelming, bipartisan support for this legislation. At last count on April 27, S. 663 had 20 cosponsors, and more Senators continue to be added. The House now has 126 cosponsors.

Those that fought and lived during World War II have been duly labeled as the "Greatest Generation." The 230,000 strong force of Merchant Mariners are surely part of the Greatest Generation and we owe them a tremendous debt. For those who are still living, we can never make up for years lost, but we can address the injustice by recognizing their contributions and by passing S. 663 this year.

I also would also like to address my support for a national veteran's cemetery in eastern Nebraska.

I, along with fellow Nebraska Senator Mike Johanns, introduced legislation, S. 746, on March 31, 2009 authorizing the establishment of a new national cemetery

for eastern Nebraska, western Iowa and northwestern Missouri in the region of Sarpy County. The House also introduced legislation, H.R. 1163 for this purpose, and it is supported by all Nebraska Representatives and an Iowa Representative.

With its historic support for our military and in recognition for its role as the home of Offutt Air Force Base and U.S. Strategic Command, I believe Sarpy County is the perfect location for a new national veteran's cemetery. Our bill will establish a new national cemetery in Sarpy County and ensure that the 172,000 veterans in this region will get the recognition they deserve and the honor of a final resting place in a national veteran's cemetery.

Current Veterans Affairs (VA) regulations require a threshold of 170,000 eligible veterans living within a 75-mile radius of a proposed cemetery site to merit the establishment of a new national veteran's cemetery. An independent analysis conducted by the Metropolitan Area Planning Agency in Omaha estimates the number to be near 172,500, while the VA estimate places the number of eligible people closer to 133,000.

The VA commissioned a study to (1) Assess the adequacy and effectiveness of the current policies and procedures that comprise the VA Burial Benefits Program; (2) Estimate the type and extent of burial needs for the future; (3) Assess the need for or interest in new symbolic expressions of remembrance and/or modify the current symbolic expressions available; and (4) Assess the need for additional performance measures that can be used to measure results with targets put in place by VA. The study of the VA Burial Benefits report was published in August 2008. The study recommended that between 2010 and 2015, that a new national cemetery be constructed in Nebraska. The commission recommended lowering the threshold to 110,000. Sarpy County, by either the independent assessment or the VA assessment, would meet this threshold requirement.

To date, the recommendations of the commission have not been accepted by the VA and we encourage the VA to review and adopt the recommendations.

A 75-mile radius may be appropriate in large urban areas with dense population but it's an arbitrary regulation that ignores the reality of rural communities and states like Nebraska. This bill would remove this arbitrary obstacle and provide veterans with the deserved recognition of burial in a national cemetery. Without such a cemetery, many would forego this honor—even though they are entitled to it.

Please join me in supporting these important measures to honor our veterans.

PREPARED STATEMENT OF JOHN M. MCWILLIAM, DEPUTY ASSISTANT SECRETARY, VETERANS' EMPLOYMENT AND TRAINING SERVICE, U.S. DEPARTMENT OF LABOR

Chairman Akaka, Ranking Member Burr, and Members of the Committee: Thank you for the opportunity to provide this Statement for the Record on pending benefits legislation. Your invitation letter lists several bills you would like to review. Of the thirteen bills listed, we will restrict our comments to S. 263, the "Servicemembers Access to Justice Act [SAJA] of 2009," and defer to the Department of Veterans Affairs and other agencies on the other twelve bills listed.

S. 263 would make a number of significant changes to the enforcement and remedies provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). In general, the Department supports this effort to strengthen the ability of servicemembers to secure their statutory right to be free from discrimination and retaliation based on their military service, and their right to reclaim their civilian employment upon leaving military service.

My testimony today will focus on several important provisions in S. 263, but I also hope that the Department will have the opportunity to provide technical assistance to the Committee on these and other provisions in the bill.

Section 2 of the bill would limit the ability of state employers to thwart enforcement of their employees' USERRA rights by asserting their immunity from individual suits under the 11th Amendment of the U.S. Constitution. This provision would do so by effectively conditioning a state's receipt or use of Federal financial assistance on its waiving immunity to certain USERRA suits—namely USERRA suits brought by individuals who are or were employees or who apply for employment or reemployment in programs or activities that receive or use Federal aid. The Department of Justice has the authority, and has exercised its authority, to bring actions against states in Federal district court on behalf of individuals in the name of the United States. However, individual state employees represented by private counsel or by themselves are not able to secure important USERRA protection unless their state employers choose to waive sovereign immunity. The Department strongly supports this provision, which would remove a significant impediment to

individuals that seek to hold public employers accountable for meeting their USERRA obligations.

Section 4 provides for enhanced remedies for violations of USERRA. This section would establish a minimum award of $10,000 in liquidated damages for most USERRA violations, regardless of the actual damages to the claimant or the employer's size. It also would permit the award of unlimited punitive damages against non-Federal employers of 25 or more employees if the violation was committed with malice or reckless indifference to the claimant's USERRA rights. The Department supports efforts to strengthen USERRA's enforcement remedies and welcomes the opportunity to work with the Committee to ensure that those remedies: encourage compliance with this important law; provide meaningful and prompt relief; can be flexibly applied by the courts or the Merit Systems Protection Board so that liabilities are proportionate to statutory responsibilities; and do not create disincentives to hiring servicemembers.

Section 6 of the bill would clarify the definition of "successor in interest" under USERRA. The Department applauds this provision, and indeed highlighted the need for such legislative action in its Fiscal Year 2007 USERRA Annual Report to Congress. Section 6 closely mirrors DOL's USERRA Regulations (20 CFR 1002.35), but deviates from the Regulations in a way that might make it more difficult, in some cases, to establish that an employer is a successor in interest. In particular, SAJA's multi-factor test would consider, among other factors, whether an employer used the same plant as its predecessor, whereas 20 CFR 1002.35 considers whether the firm used "the same or similar facilities." We believe that the broader regulatory definition is preferable because it is more likely to identify the true successor in interest. We therefore respectfully recommend that the bill be revised accordingly.

Section 7 of the SAJA seeks to clarify that USERRA prohibits wage discrimination against members of the Armed Forces. The Department strongly supports the prohibition of wage discrimination, but is concerned that, as drafted, this provision could be interpreted as requiring that wages be paid to a servicemember while he or she is away from the workplace performing military service. We do not believe that such a result is intended and would welcome the opportunity to work with the Congress to craft a narrowly-focused provision that addresses only the problem of wage discrimination.

Section 9 of the legislation would require Federal agencies to notify their contractors of their USERRA obligations. The Department applauds the inclusion of this provision, which would make clear to Federal agencies and their contractors that they share responsibility for protecting the USERRA rights of contract employees who work on Federal contracts.

Section 11 of the SAJA directs the Government Accountability Office to conduct a study on the effectiveness of the Federal Government's USERRA education and outreach program. Over the years, GAO studies have provided many important and useful recommendations for improving the Federal Government's administration of USERRA. Should this provision be enacted into law, the Department will again look forward to helping GAO meet its statutory mandate.

This concludes my statement. Again, the Department looks forward to the opportunity to work with the Committee to help ensure that the final bill addresses the Congress' intent in the most efficient and effective way possible.

PREPARED STATEMENT FROM IRAQ AND AFGHANISTAN VETERANS OF AMERICA (IAVA)

IRAQ *and* AFGHANISTAN
VETERANS *of* AMERICA

SENATE VETERANS AFFAIRS COMMITTEE,
BENEFITS LEGISLATION HEARING
APRIL 29, 2009

IAVA TESTIMONY
PATRICK CAMPBELL, CHIEF LEGISLATIVE COUNSEL
OPERATION IRAQI FREEDOM (2004-2005)

USERRA / Servicemember Civil Relief Act

S.263, Servicemembers Access to Justice Act of 2009 (Casey)

We are honored to put our full support behind S. 263, a piece of legislation that will fulfill one of IAVA's key legislative recommendations. This vital legislation will modernize the Uniformed Services Employment and Reemployment Rights Act (USERRA) for a new generation of veterans. The SAJA will directly confront these issues by increasing penalties for employers who knowingly violate USERRA protections, allow a veteran their day in court on their USERRA claims, hold the Federal and state governments to the same standards as private employers and deny federal contracts to employers who violate USERRA protections.

S. 475, Military Spouses Residency Relief Act of 2009 (Burr)

IAVA supports S.475. Each year, thousands of military spouses follow their husbands and wives to military installations overseas. These men and women selflessly leave behind their lives in order to support our nation's servicemembers. We should not punish these model citizens by taking away their right to vote or stripping them of tax residency. Overseas, military spouses should be entitled to the same rights as the servicemember they support, and S.475 will ensure that these rights are protected.

S. 842, Veteran mortgage protection (Kerry)

IAVA supported last year's Housing and Economic Recovery Act because it contained strong protections for our servicemembers facing mortgage foreclosures. In early 2008, foreclosures in military towns were increasing at four times the national average. IAVA supports S.842 because it makes the critical protections included in the 2008 Recovery Act permanent.

Vocational Rehabilitation & Survivor's Benefits

S. 514, Veterans Rehabilitation and Training Improvements Act of 2009 (Akaka)

IAVA supports S. 514. This bill will modernize the woefully inadequate benefits for service-connected disabled veterans seeking vocational rehabilitation. S. 514 will raise the monthly subsistence allowance rate from $541/month for single veterans and $671/month for veterans

with a dependent to $894/month and $1,116/month respectively. IAVA would prefer to see that the Voc Rehab subsistence allowance mirror the Chapter 33, Post 9/11 GI Bill living allowance by granting all veterans participating the military Basic Housing Allowance for E-5's with dependents(ranging from $638-$2512/month). This would ensure that the subsistence allowance will properly compensate veterans based on the cost of living in their region and will veterans the opportunity to make the vocational rehabilitation training their primary focus. The bill would also reimburse veterans who complete the program for cost incurred as a consequence of participation (e.g., child care expenses).

S. 847, Rewarding Survivors and Dependents Who Enlist (Akaka)
A son or daughter who enlists in the military after their parent was killed in the line of duty should not be denied access to their own earned educational benefits. But under the current law, if a dependent goes to school on the Dependents' Educational Assistance Program (DEA) and later enlists, that dependent will have their educational benefits automatically reduced. S. 847 is a practical solution that simply excludes DEA benefits from GI Bill benefits calculations. IAVA supports this legislation, which will give fair benefits to the military families that have made the ultimate sacrifice on behalf of our nation.

Veteran Outreach
S. 315, Veterans Outreach Improvement Act (Feingold)
IAVA is proud to have endorsed S. 315, authorizing servicemembers to petition to remain on active duty or return to active duty if they are found to have a service-connected injury that prevents them from returning to work. The signature injuries of this conflict, such as Post Traumatic Stress Disorder and Traumatic Brain Injury, are often not evident for weeks or months after redeployment. Servicemembers in the Reserve Forces who have been released from active duty and seek care in their local VA may receive excellent care, but will not receive the care they are entitled to from the DOD. In many cases these servicemembers may not receive the proper discharge or may even be called back to active duty, despite their injuries. This legislation will connect these veterans with the military health care and support they have earned.

Veterans Benefits
S. 728, Veterans' Insurance and Benefits Enhancement Act of 2009 (Akaka)
IAVA is proud to support S.728, providing substantial benefits increases to disabled veterans and increasing the availability of life insurance policies. This bill allows for the purchase of life insurance policies by disabled veterans under the age of 65, and locks the premiums to the time of purchase. Additionally, S.728 increases the amount of DIC benefits paid to dependants and parents of veterans who die of service-connected injuries. S.728 also increases burial allowances, adaptive automobile payments and adds burn injuries to the list of qualifying injuries for adaptive mobility equipment. S.728 is a needed increase to the benefits afforded to our nations wounded warriors.

S. 347, Distinguishing between the severity of a qualifying loss of a dominant hand (Ensign)
This bill allows the VA to distinguish between the loss of a dominant hand and the loss of a non-dominant hand for the purposes of compensation under the TSGLI. While it makes the compensation retroactive, IAVA is concerned that it does not specify whether the VA will offer a higher rate for the dominant hand, or it will lower compensation for the non-dominant hand.

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PREPARED STATEMENT OF THE PARALYZED VETERANS OF AMERICA

Chairman Akaka, Ranking Member Burr, Members of the Committee: Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to present our views concerning pending benefits legislation. PVA appreciates the effort and cooperation this Committee demonstrates as it addresses the problems of today's veterans and the veterans of tomorrow.

S. 263, THE "SERVICEMEMBERS ACCESS TO JUSTICE ACT OF 2009"

PVA supports S. 263, a bill to amend Title 38, United States Code, to improve the enforcement of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). With the continuation of the Iraq and Afghanistan conflict, many of our guard and reserve members have been called upon to serve on active duty for multiple tours. This has caused an increase in problems with employers when the veteran returns to his or her civilian employment.

This bill will reinforce the intentions of Congress when they passed the Uniformed Service Employment and Reemployment Rights Act of 2004. It is unthinkable that some employers have spent large amounts of money in the legal system to prevent a reservist, National Guard member, or regular military servicemember from returning to their job or obtaining employment after performing service in the Armed Forces. S. 263 would give these veterans the right to bring their case in state or U.S. district court. It would prohibit wage discrimination against veterans covered under USERRA and provide for punitive damages in the worst cases of discrimination.

S. 315, THE "VETERANS OUTREACH IMPROVEMENT ACT OF 2009"

PVA supports S. 315, a bill to amend Title 38, United States Code, to improve outreach activities of the Department of Veterans Affairs. During the 110th Congress the VA was authorized to use print and electronic media to enhance its outreach efforts with the goal of preventing suicide among veterans dealing with mental health problems related to military service.

This was an encouraging step forward for the VA to use state-of-the-art communication methods to educate veterans and the general public on the help and benefits available. By requiring separate funding for the outreach accounts of the Veterans Health Administration, Veterans Benefits Administration, and the National Cemetery Administration, Congress will be able to monitor the outreach activities of these divisions. This bill authorizes the Secretary to award grants to state and local governments, and non-profit community-based organizations to carry out outreach programs. We believe this will help the VA in fulfilling their responsibility to inform veterans and their families of the benefits and services available to them. VA must ensure that the needs of the men and women who have served and sacrificed for this Nation are provided for.

S. 347

S. 347, a bill to amend Title 38, United States Code, to allow the Secretary of Veterans' Affairs to distinguish between the severity or a qualifying loss of a dominant hand and a qualifying loss of a non-dominant hand for the purpose of traumatic injury protection under Servicemember's Group Life Insurance. PVA supports this legislation that would increase the insurance compensation currently paid for the loss of a hand, when a veteran loses their dominant hand.

When determining compensation for disabilities the VA uses the Schedule for Rating Disabilities. This guide makes a clear distinction between the loss of a dominant hand (70 percent loss) and the non-dominant hand (50 percent loss). The Rating Schedule is intended to take into consideration not only the impairment of the earnings capacity of the disabled veteran, but also the loss of quality-of-life. The loss of

any limb is a tragic event, but the loss of the dominate hand may have a more meaningful impact on the veterans ability to function.

S. 407, THE "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2009"

PVA supports S. 407, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2009." This bill will increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for certain disabled veterans. As we have in past years, PVA does not support the practice of rounding down to the next lowest dollar.

S. 475, THE "MILITARY SPOUSES RESIDENCY RELIEF ACT"

PVA supports S. 475, a bill to amend the Servicemembers Civil Relief Act (SCRA) to guarantee the equity of spouses of military personnel with regard to matters of residency. This legislation would amend the SCRA to state that a military spouse who moves out of state because of the servicemember's military orders would have the same option to claim one state of domicile regardless of where they are stationed.

This logical correction in the law will ease the interstate moving transition for military families. Both parties in a marriage should be able to file taxes together paying to one state, own property together claiming the same residence, vote at the same location, and have their driver's licenses from the same state. This legislation will help establish legal residency when the servicemember relocates.

S. 514, THE "VETERANS REHABILITATION AND TRAINING IMPROVEMENTS ACT OF 2009"

PVA supports S. 514, the "Veterans Rehabilitation and Training Improvement Act of 2009." This bill will raise the subsistence allowance paid to a veteran for each month the veteran participates in the VA's vocational rehabilitation program. On occasion veterans may drop out of the vocational rehabilitation program to become employed full time in order to support themselves and their families. On August 1, 2009, the new GI Bill will go into effect. This benefit will pay a full-time student a monthly allowance for housing which is larger than the subsistence allowance paid by the vocational rehabilitation program. We anticipate veterans leaving the vocational rehabilitation program before accomplishing their goals to enroll in college to receive the higher amount of funds for daily living. This bill would make the subsistence allowance of the vocational rehabilitation program equitable with the new GI Bill benefit.

PVA fully supports the provision of this proposed legislation that would repeal the cap of 2600 participates per-fiscal-year for the independent living (IL) program. The IL program is a VR&E program that focuses on providing services to those veterans with severe disabilities. For many years VR&E has had to abide to a CAP on the number of veterans participating in this program. That cap was recently increased from 2500 to 2600 case per year during the last Congress. However, VR&E is still forced to abide by the arbitrary cap of 2,600 new cases each year.

The consequence of this cap is that as VR&E approaches the cap limit each year, they must slow down or delay delivery of independent living services for new cases until the start of the next fiscal year. While VR&E may not bump up against the cap every year, they have in some years and at those times veterans with severe disabilities who have been determined eligible and entitled to the VR&E program in the mid to late summer have had to wait until October to receive full services. PVA strongly supports the repeal of the IL case limit especially as we anticipate that the continued military efforts associated with Operation Iraqi Freedom and Operation Enduring Freedom will unfortunately result in greater numbers of servicemembers who sustain serious injuries.

S. 663, THE "BELATED THANK YOU TO THE MERCHANT MARINERS OF WORLD WAR II"

S. 663 would direct the Secretary of Veterans Affairs to establish the Merchant Mariner Equity Compensation Fund to provide benefits to certain individuals who served in the United States merchant marine during World War II. Although we recognize the sacrifices that these brave men made in service to the Nation during World War II and we support the intent of this legislation, we have some concerns with the proposals it makes. The importance of their sacrifices cannot be overstated. While suffering extremely high casualty rates during the war, they delivered troops, tanks, food, airplanes, fuel and other needed supplies to every theater of the war.

However, PVA believes that this bill would be very costly to the Department of Veterans Affairs (VA). We believe that the money needed to provide this new

monthly benefit would reduce the ability of the VA to continue to provide the wide-ranging scope of benefits that it already manages.

We also do not understand how the amount to be provided as a monthly benefit was determined. As it stands, if this legislation was enacted, a merchant mariner would be entitled to a payment equal to veterans who have a 70 percent compensable service-connected disability.

Although we do not dispute the idea that these individuals should receive some type of benefit, we do not believe that the recommendations of this legislation are equitable with similar programs. We are not certain that this legislation maintains the priority that the VA follows for providing compensation benefits.

S. 691, TO ESTABLISH A NATIONAL CEMETERY IN SOUTHERN COLORADO

PVA supports this legislation which authorizes the VA to establish a national cemetery in southern Colorado as long as there is a clearly demonstrated need. According to VA information, there are currently only two national cemeteries located in Colorado, neither of which is near this proposed area. With the rate that veterans are dying today, particularly World War II veterans, it is imperative that the VA be able to provide a suitable burial location for these men and women. The southern Colorado region would certainly provide an excellent cemetery location that is centrally located in the state.

S. 728, THE "VETERANS' INSURANCE AND BENEFITS ENHANCEMENT ACT OF 2009"

PVA generally supports S. 728. We support section 201 which would make the necessary increase in the cost of living increases for temporary dependency and indemnity compensation payable for surviving spouses with dependent children. We agree with Section 202 which makes adjustments in the eligibility of veterans 65 years of age or older for service pension for a period of war.

We support Section 203, which makes necessary adjustments in amounts of dependency and indemnity compensation payable to disabled surviving spouses and to parents of deceased veterans. PVA also supports Section 204, which authorizes the annual increase and adjustment in limitation on pension payable to hospitalized veterans.

Title III, Section 3, acknowledges the raising cost of funerals for the eligible veteran. It specifies a payment increase to $900 for the funeral expenses. If the veteran dies of a service-connected disability the amount of payment would be $2,100 (adjusted from time to time). PVA appreciates the increase in this benefit. However, we are concerned about the supplemental nature of this benefit change that would tie availability of the increased benefits to the appropriations process.

Title IV addresses one of the critical injuries from the current conflict the servicemember who is the victim of severe burns. These injuries will result in life-long disabling and disfiguring conditions. Section 401 will include service-connected veterans that suffer from severe burns as eligible for the automobile allowance. We support this section.

As with the burial benefit increases, we have serious concerns with the supplemental nature of the benefit improvements under Section 402. While we obviously support the intention of these provisions, placing the increase of these benefits into the hands of the appropriations process will likely undermine their ethicacy.

S. 746, TO ESTABLISH A NATIONAL CEMETERY IN SARPY COUNTY, NEBRASKA

S. 746, a bill to establish a national cemetery in the Sarpy County region of Nebraska to serve veterans living in eastern Nebraska, western Iowa, and northwest Missouri.

PVA, at the national level, has no official position on this legislation which authorizes the VA to establish a national cemetery in the Sarpy County region of Nebraska to serve veterans in eastern Nebraska and western Iowa. We would note that the Great Plains Chapter of PVA, located in Omaha, Nebraska, does support this proposal. According to VA information, there is currently only one national cemetery located in Maxwell, Nebraska. With the rate that veterans are dying today, particularly World War II veterans, it is imperative that the VA be able to provide a suitable burial location for these men and women.

S. 820 THE "VETERANS MOBILITY ENHANCEMENT ACT OF 2009"

PVA supports S. 820, the "Veterans Mobility Enhancement Act of 2009." The VA provides certain severely disabled veterans and servicemembers a grant to help with the purchase of automobile. Congress initially designated the amount of the automobile grant to cover the full cost of the automobile. Until the 2001 increase in the

grant to $9,000, the amount of the grant had not been adjusted since 1988, when it was set at $5,000. Because the grant has not kept pace with inflation, the value of the automobile allowance has substantially eroded through the years. In 1946 the $1,600 allowance represented 85 percent of the cost of a new automobile. Today's allowance of $11,000 represents only 39 percent of the average cost of a new automobile. S. 820 will raise the auto allowance to $22,500 to represent 80percent of the cost of an automobile. S. 820 also instructs the Secretary to increase the dollar amount to equal 80 percent of the average retail cost of a new automobile on October 1 of each year.

This legislation reflects the recommendations of the *Independent Budget for FY 2010*.

S. 842

PVA supports S. 842, a bill to repeal the sunset of certain enhancements of protections of servicemembers relating to mortgages and mortgage foreclosures to authorize the Secretary of Veterans Affairs to pay mortgage holders unpaid balances on housing loans guaranteed by the VA. This legislation would extend the deadline for foreclosure from the current 90 days to nine months after the servicemember has returned from active duty. It also helps the servicemember on active duty by capping the interest on mortgages at six percent. This legislation will allow the VA to help the servicemember that may have entered into an unaffordable loan offered by a sub prime lender by buying that loan and renegotiating the loan payments with the servicmember. This legislation will ease some of the financial burden on the individual as they transition from civilian life to active duty.

S. 847

S. 847, a bill to amend Title 38, United States Code, to provide that utilization of survivors' and dependent' education assistance shall not be subject to the 48-month limitation on the aggregate amount of assistance utilizable under multiple veterans and related educational assistance programs. Currently under Title 38, United States Code, Chapter 35, (Dependents' Educational Assistance Program) the individual that participates in the program as an eligible dependent child or spouse is limited to 48 months of benefits. If that individual earns additional benefits from their active service in the military, they are not entitled to educational benefits since they have used the maximum 48 months. This will correct the limitation in the educational benefits for family members who chose to serve in the military.

A BILL TO MODIFY THE COMPENSATION PERIOD FOR VETERANS THAT ARE RETIRED OR SEPARATED BECAUSE OF A DISABILITY

PVA fully supports this legislation. Currently when a servicemember leaves active duty and is discharged because of a service-connected disability he or she is faced with an unreasonable delay before receiving his or her first compensation check. This delay of benefits causes the veteran to be subjected to extreme financial hardships as they try to cope with their disabilities and re-enter society's main stream. Current law establishes the effective date for original service connection as the day after military discharge. The payment date for a veteran's first VA compensation payment is the first day of the month following the month in which the benefit is effective.

To better clarify our concern and the solution, we would like to provide an example. Sgt. John Smith is medically retired on 6/31/09 from the Army for a C4 spinal cord injury from sniper bullet. His effective date for benefits is 7/1/09. In this example the injury is rated at the highest level of VA compensation ($7070 per month) due to the veteran requiring skilled care on a daily basis. His effective date for Compensation payment is 8/1/09. He would be entitled to his first check for $7070 on 9/1/09. The law does not allow the veteran to be compensated for the entire month of July in this case.

The proposed legislation would change the effective date for payment to the same date as the effective date for benefits. This change is written to only effect payment of benefit following discharge from active duty military service.

If the proposed law change were enacted John Smith would then be entitled to benefits on 7/1/09 and the compensation payment would be effective on 7/1/09, so he would receive his first check on 8/1/09 receiving an entire month of benefits ($7070), that he is not now entitled to at the most crucial time during transition from military life to veteran status.

PVA would like to thank this Committee for the opportunity to express our views relating to these important benefits for veterans. We look forward to working with this Committee as they continue addressing the issues that effect America's veterans.

PREPARED STATEMENT OF NORBERT R. RYAN, JR., USN (RET.), PRESIDENT, MILITARY OFFICERS ASSOCIATION OF AMERICA (MOAA)

VADM Norbert R. Ryan, Jr. USN (Ret)
President

April 27, 2009

The Honorable Daniel K. Akaka
Chairman
Senate Veterans Affairs Committee
U.S. Senate
Washington, DC 20515

The Honorable Richard Burr
Ranking Member
Senate Veterans Affairs Committee
U.S. Senate
Washington, DC 20515

Dear Senators Akaka and Burr:

On behalf of the 374,000 members of the Military Officers Association of America (MOAA), and their spouses, we thank you for considering the Military Spouse Residency Relief Act (S475) during the April 29th Senate Veterans Affairs Committee hearing.

Our nation has long recognized the importance of allowing service members to select a domicile authorized through the Servicemembers Civil Relief Act. Today, more than half of all servicemembers are married, and their spouses also need a place to call "home" in the midst of multiple military moves.

The sacrifice of military spouses is significant, and more efforts are needed to help them reduce the roadblocks they face. Military spouses experience a myriad of administrative hassles, in voting, property ownership, tax filing, and educational opportunities, due to relocations. Some lose opportunities to vote because eligibility deadlines have passed. Those working in portable careers sometimes face cumbersome tax filings. Many spouses miss the opportunity to develop strong credit histories because car and home titles are put only in the name of the servicemember.

Much talk today is about the stress being put on servicemembers and their families. Your support of S475 will turn talk into action to help reduce some stressors.

As the nation's largest association for military officers and their families, we urge you to favorably report out the Military Spouse Residency Relief Act to the full Senate as soon as possible so that military spouses can have the choice to share the same domicile as their servicemembers. We also request that a copy of this letter be entered into the official record of this week's hearing.

We are grateful for your leadership and the support of your bipartisan co-sponsors for the Military Spouse Residency Relief Act (S475).

Sincerely,

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